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Current Topics: Gretna Green Marriages—Poor Persons Procedure: Law Society's Report—The Marriage Bill and Poor Persons Procedure—The County Court Act and Rules—Supreme Court of Judicature: Receipts and Expenditure — The Figures: Funds in Chancery—A Reminder—Recent Decisions .. 145

The Rules of the Supreme Court .. 148

Tithe Rent-charge and the Statute of Limitations 149

Company Law and Practice 149

A Conveyancer's Diary 151

Landlord and Tenant Notebook .. 151

Our County Court Letter 152

Land and Estate Topics 153

To-day and Yesterday 154

Correspondence 155

Obituary 155

Notes of Cases—

Maritime Electric Company, Limited *v.* General Dairies, Limited .. 156

Culver *v.* Beard 156

County Valuation Committee for the County of Middlesex *v.* Assessment Committee for the West Middlesex Assessment Area .. 157

Brown *v.* New Empress Saloons Ltd. 157

Boag *v.* Standard Marine Insurance Co. Ltd. 157

Berg *v.* Sadler & Moore 158

Metropolitan Water Board *v.* Watkins 158

Iron Trades Employers' Insurance Association *v.* Union of House and Land Investors Limited 159

Union Transport Finance Ltd. *v.* Ballardie 159

Pacy and Another *v.* Field 160

Reviews 160

Books Received 161

Parliamentary News 161

Societies 162

Legal Notes and News 163

Court Papers 164

Stock Exchange Prices of certain Trustee Securities 164

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Current Topics.

Gretna Green Marriages.

IF, as seems likely, the recommendations of the Committee appointed at the end of 1935 to consider the law of Scotland relating to the constitution of marriage are carried into effect, an end will be made to the extreme laxity which has characterised the formalities, or lack of them, attending civil marriage North of the Tweed. Till now writers on Scots law have had to distinguish between regular and irregular marriages, the former being preceded by the publication of banns or after notice to the registrar, the latter being the mere indication between the parties of their intention to take each other as husband and wife. The latter were frequently spoken of as Gretna Green marriages from the fact that in the old days runaway couples from England crossed the Border to this Dumfriesshire village where, in the so-called blacksmith's shop, they exchanged vows. This industry received a severe blow by the passing of LORD BROUGHAM'S Act, which enacted that after 31st December, 1856, no irregular marriage should be valid unless one of the parties had lived in Scotland for twenty-one days next preceding the marriage or had his or her usual residence there at the time. There was no particular virtue in the choice of Gretna Green for such marriages; its merit or, perhaps we should say, demerit, being merely its proximity to the Border. It has sometimes been said that LORD ELDON contracted a Gretna Green marriage, but this is inaccurate. It is true that he contracted an irregular marriage in the sense that it was not preceded by the publication of banns, but the ceremony was actually performed by a clergyman in a Haddingtonshire village, and it is of interest to add that the young couple thought it prudent to regularise matters by going through a fresh ceremony in St. Nicholas, Newcastle-on-Tyne. LORD BROUGHAM'S Act, it will be observed, did not abolish irregular marriages in Scotland; it is now proposed to do this by permitting civil marriage much on the same lines as in England, that is, by some authorised official after due compliance with the Marriage Notice (Scotland) Act, 1878. Apart from other grave objections to which these irregular marriages were obnoxious, difficulties frequently arose in connection with establishing the proof of their existence.

Poor Persons Procedure: Law Society's Report.

THE eleventh annual report of The Law Society on Poor Persons Procedure, which covers the year 1936, records a gradually increasing realisation on the part of those assisted of the fact that practitioners are rendering gratuitous service and also a greater sense of appreciation of the help which is given. The reports of the Provincial Committees, including the London Committee, which now number ninety-one, are printed in an appendix, and are stated to be uniformly satisfactory. The response to Sir HARRY PRITCHARD'S appeal to London solicitors, whose names were not on the rota, to undertake a share of the work, was that an additional 122 solicitors offered their names. This result, although not up to expectations, was, it is stated, enough to avoid the delay in allocating London cases which had been threatening. London solicitors who are not assisting in the work are invited once again to consider sympathetically the desirability of doing so. The report of one of the Provincial Committees refers to the difficulty, even under the extended powers given by the new rules, of getting profit costs allowed, and states that it appears inconsistent that poor person clients should recover large compensation—running into hundreds of pounds—and that the solicitors, by whose efforts and ability the results have been mainly attained, should not be adequately recompensed in such cases. The Law Society report draws attention to the refusal of such an order in *Jackson* v. *Jackson and Barwell*, 52 T.L.R. 717, and suggests that, although since this decision an application under Ord. 16, r. 31 (B), may fail, it may succeed under r. 31 (C), which empowers the court to order that a sum not exceeding one-fourth of the amount recovered may be paid to the solicitor. Reference is made also to *Stevens* v. *Walker* [1936] 2 K.B. 215, where the Court of Appeal held that there was no sufficient material evidence available for the exercise by a judge of his discretion to remit a poor person's case to the county court. The Council of The

Law Society expresses the hope that as a result of this judgment poor persons' actions will not be remitted to the county court unless a really effective case is made out. A third case to which reference is made is that of *Re Leighton's Conveyance*, 53 T.L.R. 273, where the Court of Appeal held in effect that the ordinary right of a mortgagee to add to his security all past charges and expenses reasonably and properly incurred in ascertaining and defending his rights was not a matter which arose in connection with the awarding of costs, and was thus outside the prohibition contained in Ord. 16, r. 28, against a poor person being made liable to pay costs to another party.

The Marriage Bill and Poor Persons Procedure.

THE Council of The Law Society does not consider itself entitled to comment upon the principles of the Marriage Bill, but regards it as its duty merely to record the opinion that, if the proposal in the Bill that it shall be an additional reason for divorce that either spouse has deserted the petitioner for a period of at least three years is enacted, the number of applications for certificates will increase considerably. It is, moreover, thought desirable, particularly in connection with the possible passing of the Marriage Bill, that jurisdiction should be conferred on district registries to deal with paid divorce cases as they now deal with poor persons' cases. Such an extension, it is stated, would be of material effect in solving the vexed question of border-line cases and would automatically reduce considerably the number of persons applying for divorces under the poor persons procedure. Attention is drawn to the fact shown by the reports that poor people have to a considerable extent been provided with legal advice in the county courts and at petty sessions. There is, it is said, no doubt a greater tendency to go to the committees for advice and by this means much sense of grievance is removed. Mention is made of the meeting of delegates from the various poor persons committees which took place at The Law Society's Hall last April, when a variety of topics were considered—uniformity of procedure, the discretion to refuse a certificate where a judgment would prove fruitless, and dormant deposits, among them. The refusal of certain district registrars to allow searches to be made by other than solicitors when applying for decree absolute is alluded to. The Senior Registrar in London sent last July a letter to all district registrars in which it was stated, with a view to uniformity of practice, that in cases proceeding in the Principal Registry a clerk to the petitioner's solicitor, if so described in the affidavit of search, is permitted to make the necessary affidavit. The modification of the rule is recorded as having been made in one case accordingly, and the report states that no doubt similar provision has been made in other registries. In 1936 it was not found necessary to institute prosecutions of any kind in connection with poor persons procedure. A record number of applications (1,292) was granted in 1936. The number of applications (2,690) was rather less than in 1935. The Council records its desire to express to the provincial law societies and to their poor persons committees and the honorary secretaries and to the barristers who have appeared, and to the conducting solicitors, its gratitude for their valuable co-operation and assistance, without which, it is said, the scheme would be unworkable.

The County Court Act and Rules.

MR. WILFRED DELL, the Registrar of the Mayor's and City of London Court, recently addressed members of the Solicitors' Managing Clerks' Association on the subject of the new County Court Act and Rules. Sir HOLMAN GREGORY, K.C., Recorder of the City of London, was in the chair. A report of the lecture appears on p. 162 of the present issue, and therefore only the briefest notice is necessary here. Among the matters with which the lecturer dealt were the simplified procedure under s. 48 of the County Courts (Amendment) Act, 1934, for the recovery of land, the provision for transfer of an action to the High Court where a counter-claim of considerable magnitude is in question, the alterations brought about by the new rules in regard to assigned debts, the eleventh hour amendments introduced concerning process servers, the new provisions in regard to affidavit evidence, the limitations concerning procedure by default summons, the new procedure by originating application, and the discretion vested in the court as to costs which under the Act of 1888 followed the event. The foregoing list by no means exhausts the subjects treated by the lecturer, and readers will find in a study of the lecture, as doubtless did the hearers, a source of interest and profit.

Supreme Court of Judicature: Receipts and Expenditure.

H.M. Stationery Office has recently published a pamphlet entitled "Account of Receipts and Expenditure of the High Court and Court of Appeal for the Financial Year, 1935–36" (price 1d.). The account has been prepared in pursuance of s. 214 of the Supreme Court of Judicature (Consolidation) Act, 1925, and shows the receipts and expenditure during the year ended 31st March, 1936, in respect of the Court of Appeal, the High Court (including the Courts of Assize), the officers connected with these courts and the officers attached to them. The Court of Criminal Appeal, though not part of the Supreme Court of Judicature, is included in the account because it is composed of judges of the King's Bench Division, and its officers are comprised in the Central Office of the Supreme Court. On the other hand, the Central Criminal Court is, except as regard the High Court judges, excluded from the account, its expenses not being paid out of moneys voted by Parliament. Moreover, the account does not include the fees taken by, or the expenses relating to, official receivers or officers of the Board of Trade, though the Bankruptcy and Companies Winding-Up Departments are, of course, included. Following a suggestion made in the course of the Third Report of the Committee on National Expenditure (Cmd. 1922, No. 1589) the form of account and the particulars included in it have been selected so as to show as accurately as possible how much of the cost of civil justice in England and Wales, so far as it is administered by the Supreme Court of Judicature, is covered by court fees. This has involved the expenditure in respect of the criminal business of the High Court being shown in a separate account.

The Figures: Funds in Chancery.

IT would be out of place here to give anything like a detailed analysis of the figures. Brief allusion may, however, be made to some of the items. Out of the total of receipts in the account relating to civil business (£946,066) court fees taken in stamps amounted to £541,302, while fees taken in cash amounted to £246,965. The only other item on this side of the account which need be mentioned, is the figure of £48,786, representing interest on funds formerly belonging to the Court of Chancery. In the prefatory note to the account it is recalled that funds in the possession of the Court of Chancery amounting to £3,628,828 17s. 8d. stock, and £285,916 12s. 6d. cash and held by the court against liability to suitors were, by the Courts of Justice (Salaries and Funds) Act, 1869, transferred to the Commissioners for the reduction of the National Debt, and were applied in cancelling Government stock to the amount of £3,938,345 19s. 1d. This transfer was made on terms that the Treasury was to give the court credit in its annual account for an amount representing the dividends or interest which would have arisen from the stock so transferred and from the stock and securities purchased with the cash so transferred, if the stock and securities had not been cancelled, and that the Consolidated Fund should become liable *pro tanto* to the suitors of the court, the Treasury being under an obligation to make payments from time to time, if required, in aid of the cash balance of the court at the Bank of England, while the cancelled stock was to be reduced,

for the purposes of the annual account, by an amount which, if sold, would have been sufficient to raise the sums so paid. By 31st March, 1936, payments represented by the stock to the amount of £1,420,380 0s. 6d. had been made by the Treasury in aid of the cash balance, and the cancelled stock in respect of which the court is entitled to credit stands at £2,517,965 18s. 7d. The item in the account is the amount of the dividends or interest on this amount, less income tax at the standard rate. On the expenditure side of the same account, it is of interest to note that judges' salaries and pensions amount to only £168,649, out of a total of £807,447. The largest item of expenditure in the account (£302,614) is attributable to the salaries, wages and allowances in regard to the Royal Courts of Justice and Probate Registry. The grant in aid of the expenses of administering the Poor Persons Rules amounts to £7,000. Turning for a moment to the account concerned with expenditure on criminal business, it may be shortly noted that the estimated proportion of judges' salaries and pensions (excluded, of course, from the former account) amounts to £39,758, which is the highest individual item in a list totalling £84,836. Officers' salaries and expenses in regard to the Court of Criminal Appeal amount to £14,219, while the proportion of circuit allowances and expenses attributable to criminal business is estimated at £18,158.

A Reminder.

THE attention of readers is drawn to the fact that applications to the Inspector of Taxes for certificates of annual value in relation to land within s. 14 of the Tithe Act, 1936, must be made before 1st March. There is no power to grant extension of time and the Tithe Redemption Commission has announced that it will not, therefore, be able to allow remission of the excess of a redemption annuity over one-third of the annual value of agricultural land in respect of the half-yearly instalments of annuities which will be payable on 1st April and 1st October of the present year where there has been failure, for whatever reason, to make application for a certificate before 1st March. The matter was dealt with in a "Current Topic" in our issue of 6th February, to which those desiring further particulars are referred.

Recent Decisions.

IN *Wyatt* v. *Guildhall Insurance Co. Ltd* (*The Times*, 12th February), the plaintiff, a passenger, who had obtained against the owner of the car judgment for personal injuries sustained in a collision, sued the insurance company for the amount of the judgment and costs under the policy issued to the owner, by virtue of s. 10 of the Road Traffic Act, 1934. The policy excluded use of the vehicle for hiring, and at the time of the accident the plaintiff was being carried for reward on a journey which the owner was taking in any event. BRANSON, J., held that the policy did not cover the case, and the action failed on this ground. Section 10 aforesaid contemplates satisfaction of judgments by insurance companies in respect of such liability as is required to be covered by a policy under s. 36 (1) (*b*) of the Road Traffic Act, 1930. A proviso to para. (*b*) enacts that a policy shall not be required to cover "except in the case of a vehicle in which passengers are carried for hire or reward . . . liability in respect of the death of or bodily injury to persons being carried in or upon . . . the vehicle at the time of the occurrence of the event out of which the claims arise." The learned judge intimated that unless the car was one in which passengers were habitually carried for hire or reward the proviso applied without the exception, and that the defendants in the case were entitled to succeed on that ground also.

In *Berg* v. *Sadler and Moore* (p. 158 of this issue), the Court of Appeal upheld a decision of MACNAGHTEN, J., who disallowed a claim by a retail tobacconist for the return of money paid to the defendant wholesale tobacconists in circumstances designed to conceal from them the fact that the cigarettes for which the money was paid over were for him. Contrary to an agreement with the Wholesale Tobacco Trade Association, the plaintiff had sold cigarettes at cut prices, and had been placed on the "stop list" in consequence. The defendants were bound by a similar agreement, and would have suffered grave injury had they knowingly supplied the plaintiff with the goods. LORD WRIGHT, M.R., intimated that the case involved an application of the principle *ex turpi causa non oritur actio*, and that, the contract being tainted with fraud, the defendants could rely on the principle *potior est conditio possidentis* so far as the plaintiff was concerned. See *Simpson* v. *Bloss*, 7 Taunt. 246, 250; *Kearley* v. *Thomson*, 24 Q.B.D. 742, 745; *Alexander* v. *Rayson* [1936] 1 K.B. 169, 190.

In *Green* v. *Kursaal* (*Southend-on-Sea*) *Estates Ltd. and Others* (*The Times*, 16th February), an action for penalties under the Sunday Observance Act, 1780, in respect of the alleged opening of the Kursaal at Southend-on-Sea for entertainments on certain stated Sundays was dismissed with costs. Claims against the above-named defendants, their managing director, and a company (in respect of the alleged use of a water chute) were dismissed on the ground that there was no evidence that sideshows were open on Sundays. An advertisement announcing "dancing every evening except Fridays and Sundays" was not, it was held, to be read as meaning that all other entertainments were open on Sundays. In another advertisement which referred to the "amusement park and attractions" as "open daily, including Sundays," the alleged printers were charged as advertisers, and leave to amend the pleadings was refused (to allow such would have been allowing the plaintiff to bring a new action after the statutory period), and the advertisement was not of a public entertainment, but of a place. A claim against a licensee of a public-house in respect of an alleged display of an advertisement failed for want of evidence that the defendant was the licensee, and the statement of claim alleged in effect that he advertised, while the most that he did was that he "published."

In *Pacy and Another* v. *Field* (p. 160 of this issue), £35 damages were awarded to the infant plaintiff, and £2 10s. special damages to his father in respect of personal injuries sustained by being bitten by an Airedale dog. HILBERY, J., intimated that it was not sufficient to affect the defendant with liability to prove that the dog had on another occasion bitten a human being. It must be an occurrence which showed that the dog had developed a tendency to bite people of a class or type. In the present case the defendant was in a position of having notice that the dog was liable to bite small boys.

In *E. Dent & Co. Ltd.* v. *Western Clock Co.* (*The Times*, 13th February), an injunction was granted until trial of the action to restrain the defendants, an American company, from using any words on cases, showcards or advertising matter calculated to lead the public to believe that they were the makers of Big Ben.

In *Boag* v. *Standard Marine Insurance Co., Ltd.* (p. 157 of this issue), the Court of Appeal upheld a decision of BRANSON, J., to the effect that under s. 79 (1) of the Marine Insurance Act, 1906, where goods were insured by the owners to their full value by a primary policy and subsequently a further insurance was taken out on the same goods for the amount of their increased value, and the goods were lost by being jettisoned so that the owners were entitled to be recouped in general average, the underwriters of the primary policy were entitled to be subrogated in respect of the whole contribution recovered by the owners to the exclusion of the underwriters of the increased value policy. LORD WRIGHT, M.R., intimated that the case would have been different if it had been one of double insurance under s. 32 of the Marine Insurance Act, 1906.

The Rules of the Supreme Court.

VIII.—FIXING THE DATE OF TRIAL.

"THE most useful feature of the New Procedure List," Greer, L.J., wrote to *The Times* on 8th October, 1935, "is that it enables a judge to fix a date of trial."

This is by virtue of Ord. XXXVIIIA, r. 9 (1). It is true that by Ord. XXXVI, r. 1 (A), there is liberty to apply to the master or the judge for a certificate for a speedy trial, but this power applies only to cases "which ought to be tried at an early date." When such a certificate is granted the judge in charge of the list or the judge in chambers may fix "an early date" or he may direct that the trial be "expedited."

Why should not *every* case be tried at an early date? Is not *every* plaintiff entitled to have his claim adjudicated upon within a reasonable period? Is there any reason in principle, apart from convenience, why the privilege of a fixed date of trial should be reserved for those actions only which are certified as fit for New Procedure? The obligation to peruse the lists each term in order to ascertain the position of a case; the peremptory duty of a prompt and eager tour of the "warned list"; the scare lest briefs must be prepared at the last minute; the real and profound anxiety of counsel and their clerks in a natural endeavour to appear simultaneously in two courts, or even in three; the urgent summoning from the world of their business, either in London or in the country, of the parties and their witnesses, to lounge about the Law Courts for one day, perchance, or two, or three—over a week-end perhaps—and then to return, their case postponed awhile; all these responsible duties cast upon the legal advisers, this anxiety of litigants and witnesses and counsel; do they not tend not only to an unnecessary increase of the unimaginable expense of litigation but also to the disparagement in the eyes of the reasonable man of the ways of the lawyers, and, indeed, of the whole legal process?

"The scandal at present," said Lord Maugham, giving evidence before the Royal Commission on the Despatch of Business at Common Law, "is when you have to bring up half a dozen or more witnesses from the country, and they are put into a hotel somewhere in London and there wait sometimes three or more days, and every now and then it happens that after they have been in London that length of time the judge says: 'I am very sorry, I cannot take this case. I have to go to assizes at so and so,' and back they go to their homes." (p. 311; 4246).

The proposal to fix the date of a trial is not, in truth, a new one: for a long time now has it been before the best judicial minds of our day, but its solution is bound up with two other questions. First comes the problem of increasing the judicial strength of the King's Bench Division—a problem which evokes a great heat of conflicting opinions. Secondly is the less controversial conviction—which commended itself to the Royal Commission (Cmd. 5065, pp. 50–52)—that the lists should be re-arranged and that particular lists should be assigned to particular judges.

Apart from the Commercial List and the Short Cause List, there would then—it was suggested—be four ordinary lists: Special Jury, Common Jury, Long Non-Jury and Short Non-Jury. The Short Jury List, the Commission recommended, would supersede the New Procedure List (p. 51), and cases in this list would be given fixed dates of trial. As to cases in the other lists, a beginning would be made by fixing not the actual date, but a period within which the case would be certainly tried.

A particular judge, moreover, would be appointed for one year to take charge of a particular list, in order to secure an easier continuity (p. 52). See also the evidence of Lord Wright (p. 77 of Minutes; 1150).

A very careful and no less fascinating examination of the proposal to increase the judicial strength in the King's Bench Division led the Commission to the view that no immediate addition was required (chap. X, pp. 92–101). But the weakness—if one may say so—of this chapter is that the problem is investigated as if it were simply a matter of statistics—too coldly and critically. May we respectfully differ? Lord Atkin, who pointed out that in 1873 there were no less than eighteen judges, said that now, despite the increase in population and the heavier burden of work and strain, there are one chief and nineteen puisne judges only (p. 236; 3381). A system of fixed dates for cases, he thought, was impossible without a system of judicial reserve (3380). The present number, in his view, was "quite ridiculous." The majority of the witnesses before the Commission advocated the appointment of more judges. Greer, L.J., stated that he did not know of any civilised country where the supply of High Court judges was so meagre (p. 390), and he suggested an increase of ten judges in addition to the number fixed by the Judicature Act (p. 391; 5160). Now, although the volume of work in the King's Bench Division appears, at the present time, to be at an ebb; although it has diminished since the Report of the Royal Commission, it by no means follows that the need for more judges has disappeared. Cases have a habit of outlasting "one hour" that counsel—to comfort his colleagues of the next case—prophecies with such modesty, such optimism! Sickness, moreover, will always take its toll. One prefers, with respect, the view of Mr. E. Clement Davies, K.C., that the appointment of four new judges is required—an essential reform to the extension of the fixed date principle (pp. 127–129). It is a "reserve" that is wanted, "a margin for emergencies," "a balance of judge-power." "The notion of a judge with an idle day appals people in this country. It does not seem so bad to me, I must say," were the last words of Lord Maugham's evidence (p. 314; 4306).

One way, however, of increasing the judicial strength does not appear to have been fully considered by the opponents of the project. The Court of Appeal has frequently, within the last few years, been sitting in three Divisions, implemented by the help of judges from the King's Bench and the Chancery Divisions. Upon this court has fallen what increase there was of judicial business; and its lists have been swelled by the number of appeals from the county courts. Has not the time arrived for the establishment of a *third* Division of the Court of Appeal? If there really exists an insuperable obstacle to the appointment of more judges to the King's Bench Division, that Division might draw its reserve from an enlarged Court of Appeal. Moreover, those who advocate "a closed Court of Appeal"—with whom the writer ventures to agree—might well prefer to see Lords Justices of Appeal sitting—when current appeals were disposed of—as additional judges of the King's Bench Division.

The Commission recommended that the benefit of a fixed date of trial ought to be extended, so far as practicable, to all litigants (p. 50).

"In our opinion," they say, "any of Your Majesty's subjects who wishes to have a dispute determined or his rights ascertained in the courts ought to be assured that, to whatever list his case may be assigned, it will be heard within (say) two months of being ready, that it will be reached either on a day fixed definitely, or so far as this is impracticable, fixed within a specified and comparatively short period, and that he will not be exposed to the hazards of a sudden attack by a large number of judges on a particular list or of a prolonged abstinence from a particular type of case." (p. 51).

Greer, L.J., opined that any case pending for more than three months from the time when it was ready for trial was in arrear (p. 393; 5196). Lord Wright thought that it ought to be possible to try an ordinary small case "within a few months at longest" (p. 77; 1151). A long case—he instanced the *Portuguese Bank Case*—the parties sometimes did not wish to be tried "for quite a substantial time."

Lord Maugham regarded the fixing of date of trial as a matter " of first-rate importance in a large number of cases " (p. 309). No one can tell how long a difficult case will last, and there is no *reserve* of judges. Abroad and in Scotland the problem does not exist. Abroad, however, the judges run into hundreds—1,237 in France; there is a regular system of promotion and judges are not drawn from the Bar. The analogy from foreign countries does not, with respect, apply to conditions in England; the comparison with conditions in Scotland is of greater value. Greer, L.J., in his statement (p. 391) pointed the same comparison. The number of judges in England—of first instance and appellate—is thirty-five, " a mere handful " in a population of about 40,000,000. In Scotland, containing a population of 5,000,000, the Court of Sessions consists of thirteen members—Judges of First Instance, and Judges of Appeal, who sit in the Inner House. If a Judge of First Instance is not required, he sits in the Inner House; and if, after a date of trial has been fixed, there is no Judge of First Instance available, one of the judges comes from the Inner House and tries it (p. 310). Greer, L.J., added a note which he had received from one of the Scottish judges that a fixed date—which is " peremptory "—is set aside for any jury trial, and that, before fixing it, the Principal Clerk of Session consults the parties' solicitors.

All these things, however, are matters of machinery, rather than matters of principle. They have been introduced into this discussion solely lest it be objected that the system of fixing the date of trial is an impossible ideal, and the practical difficulties are insuperable. Practical difficulties there are, but with discrimination and goodwill they can all be overcome. Eminent members of the Bar who gave evidence, and judges of eminence, stressed the need, indeed, the urgency, of this reform, and in no ambiguous terms the Commission declared its view. That was a year ago. Fixing the date of trial, or, at any rate, a short period within which the case would certainly be tried, would bring incalculable relief to solicitors and counsel—who would then be " sure when they accept a brief in a case that they will be there on the day fixed ": per Lord Maugham, p. 310—and an opportunity for disciplined tranquillity to litigants and their witnesses. Nay, more, it would introduce into a nebulous and indeterminate sphere the fixed rule of law! Is there any real reason why this recommendation of the Royal Commission should not be put into practice straightway?

(To be continued.)

Tithe Rent-charge and the Statute of Limitations.

THE question whether a payment by mistake prevented tithe rent-charge from being statute-barred was recently considered at Harleston County Court in *Queen Anne's Bounty* v. *Harding*. The claim was for £16 18s. 2d., being the balance of two years' tithe rent-charge to October, 1935, issuing out of Willow Farm, Weybread. The respondent admitted liability for £2 8s. 8d. vicarial tithe, but contended that the appropriated tithe, viz., £14 9s. 6d., was statute-barred. The applicants' case was that the latter tithe was paid until the 1st October, 1933, by Messrs. Higgins as owners of Church Farm, which adjoined Willow Farm. In that year a re-survey revealed that the land in question was not owned by Messrs. Higgins, and they accordingly refused further payments. The respondent bought Willow Farm in 1933, and liability was disputed on the ground that neither she nor her predecessors in title had paid tithe for sixty years. The applicants produced a book, obtained from the Diocesan Board of Finance, purporting to show that both vicarial and appropriated tithe had been paid by the same person from 1864 to 1923, when the collection was taken over by the board. The book was held admissible, as coming from the proper custody, and, although no entry stated that the tithe issued out of Willow Farm, the original tithe apportionment showed that the vicarial tithe (£1 2s. 3d.) and the appropriated tithe (£10 1s.) both related to Willow Farm. It was contended for the respondent that a payment in mistake, by the owners of Church Farm, did not constitute a continuance of receipt of tithe in respect of Willow Farm. His Honour Judge Rowlands observed that, from a comparison of the tithe collection book with the original apportionment, it was clear that the appropriated tithe, as well as the vicarial tithe, had been paid by the same person until 1923. The respondent was admittedly liable for vicarial tithe, and it followed that she was liable for the appropriated tithe issuing out of the same land. The case was taken out of the statute by the fact that the respondents' predecessors had paid both tithes up to 1923, thereby acknowledging the liability. The applicants were therefore entitled to judgment, with costs.

This question is not governed by any precise authority, although a fee farm rent was considered in *Adnam* v. *Earl of Sandwich* (1877), 2 Q.B.D. 485. The rent was granted to the defendant's ancestor in 1628, and the land out of which it issued was bought by the plaintiff's predecessor in 1812. Nevertheless, the vendor and his successors in title continued to pay the rent, and the mistake was not discovered until 1872. In that year the payments accordingly ceased, and distress was levied upon the land of the plaintiff. In a case stated, in an action of replevin, it was held by the Divisional Court (Mellor and Field, JJ.) that the statute of limitations only applied where there had been an omission to enforce remedies with the knowledge of non-payment of the rent. Moreover, the vendor in 1812 had apparently agreed to indemnify the purchaser, so that the payments until 1872 were made on behalf of the plaintiff and her predecessors in title. As the title was not statute-barred, judgment was given for the defendant—the person entitled to collect the rent.

This judgment was not cited in *Dean & Chapter of Ely* v. *Winfrey* (*The Times*, 5th March, 1906), in which the respondent's case was that, although he had owned the land for twenty-seven years, neither he nor his tenant had been asked for tithe rent-charge, which was accordingly statute-barred. The county court judge at Holbeach upheld this contention, and the claim therefore failed.

A similar decision was given in *Duke of Beaufort* v. *Watkins*, noted in the " County Court Letter " in our issue of the 23rd January, 1937, at p. 73, *ante*. In view of the uncertain state of the law on the subject, a ruling of the court will doubtless be obtained in due course under the Tithe Act, 1936, s. 39 (2). The preparation of the annuities maps and registers will doubtless reveal many instances similar to those considered in the two recent cases above mentioned.

Company Law and Practice.

Guarantee of Dividends by a Vendor to a Company.

ON the sale of a going concern to a company it sometimes happens that the vendor guarantees that the profits of the company shall for a fixed period amount to a specified sum and provides a fund available for making up the profit to that sum if in any year there shall be a deficiency. This can properly be done, but care must be taken that the machinery adopted does not result in the fund provided by the guarantor becoming assets of the company available for creditors, and more particularly by reason of the fact that the fund is constituted out of the purchase money payable by the company to the vendor, so that in reality capital of the company is utilised for the payment of dividends. A consideration of some

of the decided cases will, I think, indicate the difficulties which may arise and which have to be guarded against.

In *In re Stuart's Trusts*, 4 Ch. D. 213, there was an agreement for the sale of mining property to a trustee for a company in the course of formation, and it was provided that the purchase money should be paid by instalments, and that out of the last two instalments so much as was necessary to guarantee dividends at the rate of 7 per cent. on the issued shares of the company for four years should be invested in the names of trustees; after each of eight half-yearly meetings of the company one-eighth of the fund was to be sold and the proceeds paid to the directors; and the vendor personally guaranteed the payment of the dividend. The company was registered shortly afterwards, and by its articles which referred to the guarantee it was provided *inter alia* that payments made to the directors out of the guarantee fund should be "considered as profits and applicable only to the payment of dividends."

Several sums were paid to the trustees of the guarantee fund and invested by them, and several sales and payments out were made in accordance with the guarantee. Before the four years had elapsed the company went into liquidation and the question of who was entitled to the balance of the fund in the hands of the trustees arose for decision. Bacon, V.-C., held that the shareholders as individuals had no claim, but that the liquidator was entitled to the fund. The fund had in fact been derived from the purchase money paid by the company to the vendor; the payments received out of the fund were assets of the company available for the discharge of its debts; those payments were declared by the articles to be profits, but as such they were not exempt from availability for the discharge of debts; and there was nothing which gave the shareholders as individuals any rights in the fund.

A similar decision was given in the case of *In re Menell et Cie Limited* [1915] 1 Ch. 759. There the vendor guaranteed that the net profits of the purchasing company in respect of the business it was acquiring should amount to not less than 10 per cent. per annum on the paid-up capital of shares subscribed for by the public, and undertook to make up the profits of the company to such a sum as would allow the distribution of a dividend of 10 per cent. The vendor further agreed to pay a sum equal to 10 per cent. of the total amount of the shares subscribed for, such sum to be paid out of the purchase money and to be held by the vendor and two trustees to secure the performance of the guarantee. Subsequently the directors drew a cheque for £380, the amount of 10 per cent. on the shares subscribed for by the public, on account of the purchase money payable to the vendor, and paid the cheque into a bank in the names of two trustees. The company was wound up and the question had to be determined whether the sum deposited formed part of the assets of the company or whether the contributories of the company had any interest in such sum.

Warrington, J., said that had the matter rested on the personal guarantee by the vendor and his undertaking to make up the amount of profits to the guaranteed 10 per cent., he would, following the decision in *In re South Llanharran Colliery Co.*, 12 Ch. D. 503 (a case to which I shall shortly refer), have held that the true intention of the parties was to provide a fund that should be divisible among the shareholders and not form part of the general assets of the company. But this was a case not of a mere personal obligation on the part of the vendor, but in which a part of the purchase money itself was allocated and set apart for the satisfaction of the guarantee with the result that it was the company and not the vendor who was providing the fund which was to be divided among the shareholders. There was no liability on the part of the vendor to make the deposit except out of the purchase money; and this money was and never ceased to be in reality the company's money. It was paid by the company out of the money subscribed by the shareholders for their shares; so that the shareholders were now really claiming to be paid a dividend out of the money subscribed, or, in other words, were attempting to get back a part of what was or had been moneys of the company which were now divisible among its creditors. The learned judge held, therefore, that the sum in question formed part of the general assets of the company.

In the two cases I have mentioned the fund supporting the guarantee of dividends was held in fact to have been derived from the purchase money paid to the vendor, and in the circumstances to have been part of the assets of the company, and so available for its creditors in a winding-up. But that it is possible to enter into such an arrangement guaranteeing dividends without producing this result is shown by the decisions in the *South Llanharran Colliery Case*, *supra*, and in *Re Gelly Deg Colliery Co.*, 38 L.T. 440. In the latter case the purchase money payable to the vendor was made up of shares in the company, acceptances of the company, and a sum of cash payable six months after allotment of shares to the public: the vendor agreed to pay £15,000 in cash within thirty days after such allotment to two trustees who should hold the same in trust to secure the payment of a minimum dividend of 10 per cent. on the issued shares of the company for the term of three years. The trustees from time to time paid the sums necessary to make up the minimum dividend to the directors, who distributed them to the shareholders. Shortly after the last payment became due under the guarantee but before it had reached the shareholders the company was ordered to be wound up, and the liquidator claimed the fund then remaining in the hands of the trustees. Malins, V.-C., pointed out that the fund was not provided out of the purchase money, and held that the agreement created a trust for the individual shareholders. The money was not paid by the trustees to the company as its property but simply for purposes of distribution among the shareholders; at no time did the fund belong to the company, and consequently the balance remaining in the hands of the trustees was not liable for the payment of the company's debts.

Finally, there is the *South Llanharran Colliery Case*, to which I have already referred. There the vendor agreed to pay the company during the first two years of its incorporation a sum sufficient to bring up the net profits to an amount equal to 5 per cent. on the paid-up capital; any moneys paid by him were to be repaid out of surplus profits in future years remaining after payment of a dividend of 10 per cent. Payments were made by the vendor in pursuance of this agreement, the money being paid to the directors for distribution among the shareholders. After the last payment became due, but before it was paid, the company was wound up and the vendor then paid the final amount due direct to the shareholders. The liquidator claimed payment of this amount as part of the assets of the company.

The Court of Appeal rejected this claim and held that the money due was properly payable to the shareholders and did not belong to the company. James, L.J., said: "Could it have been intended that [the amount payable under the guarantee] should be paid to the company for working purposes? Could it have been meant for any other purpose than to make up the dividends to the specified amount? Could it have been set aside as profits? If not, how could it have been meant to increase the capital of the company? I think any man of business would have considered it, not a sum to be added to the working funds, but as intended to put the shareholders in the same position as if the company had made profits to a sufficient amount . . . The real meaning of the contracting parties was that the contract was to be for the benefit of the shareholders, not of the company. The payment to the company was mere machinery—the company was only the hand by which the money was to be paid to the shareholders; it was to be paid

to the company as into an office, that it might be distributed to the shareholders."

It will be noted that in this case there was no provision for the establishment of a fund to be available for the payments requiring to be made under the guarantee. It was nevertheless argued that in effect the payment was to be made by the vendor as part of the property of the company, i.e., that it was a device by which a portion of the purchase money was to be returned to the shareholders. But this, it was pointed out, was not the contract; there was no portion of the purchase price which was to be set apart and returned to the shareholders, but the vendor having received the whole of the purchase money made a personal contract to secure to the shareholders interest on their capital. The purchase money ceased to be part of the capital of the company when it got into the pocket of the vendor and any payment he made was made out of his own money.

The cases I have mentioned show clearly, I think, that if a vendor to a company is guaranteeing dividends and does not desire that his payments should become assets of the company available for its creditors he must take care to see (*a*) that the guarantee agreement does not involve the appropriation of any part of his purchase money for the purpose of paying the dividend, and (*b*) that the shareholders of the company as such are constituted the direct beneficiaries. Otherwise, he may find that all he has done is to provide a fund for the payment of the company's debts.

A Conveyancer's Diary.

Estates Tail in Undivided Shares. Protector of the Settlement.

I HAVE had a question of some interest put to me which I think that my readers may like to know about.

At the end of 1925 lands were settled to legal uses as follows:—

(i) Income to A and B during their joint lives in equal shares;

(ii) The income to the survivor of A and B for his life;

(iii) Subject to the prior life interests to C in tail male.

The position appears to be this: The land being held in undivided shares, para. 1 (3) of Pt. IV of the 1st Sched. to the L.P.A., 1925, applies, and the land vested at the commencement of that Act in the S.L.A. trustees upon the statutory trusts. The paragraph reads:—

"If the entirety of the land is settled land (whether subject or not to incumbrances affecting the entirety or an undivided share) held under one and the same settlement, it shall, by virtue of this Act, vest, free from incumbrances affecting the entirety, which under this Act or otherwise are not secured by a legal mortgage, and free from any interests, powers and charges subsisting under the settlement, which have priority to the interests of the persons entitled to the undivided shares, in the trustees (if any) of the settlement as joint tenants upon the statutory trusts."

So far, so good. There seems to be no doubt that, although the interest of the persons entitled in undivided shares is a life interest only, the transitional provision quoted applies, and the legal estate is vested in the trustees of the settlement upon the statutory trusts which involve a trust for sale.

That being so, the trustees of the settlement hold the land upon trust for sale, and the estate tail of the person entitled in remainder is an equitable estate only in the proceeds of sale.

It was held in *Re Price* [1928] Ch. 579, that in such a case the interest of the remainderman in tail was an absolute interest and on his death passed to his personal representative.

Having regard to the fact that, for the first time in our legal history an entailed interest might, by virtue of the L.P.A., 1925, s. 130, be created in personal property, it seems to have been considered anomalous that such a result should follow, so the L.P. (Entailed Interests) A., 1932, was passed, which provided that "the right of a person who, if the land had not been made subject to a trust for sale by virtue of this Act" (i.e., the L.P.A., 1925) "would have been entitled to an entailed interest in an undivided share in the land, shall be deemed to be a right in a corresponding entailed interest in the net proceeds of sale attributable to that share."

That enactment does not, however, make any provision with regard to the "protector of the settlement," and I do not see how there can be a "protector" in such circumstances, under the law as it now stands.

Section 130 of the L.P.A., 1925, does not, so far as I can tell, affect the matter. That section enables estates tail in real or personal estate to be created "by way of trust," but only by the use of like expressions which before the Act a similar estate tail could have been created in freehold land "and with the like results, including the right to bar the entail, either absolutely or so as to create an interest equivalent to a base fee; and accordingly all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property."

Now, the Fines and Recoveries Act, 1833, only enables a tenant in tail in remainder to disentail with the consent of the person who is "the protector of the settlement," namely, a person entitled to a prior life estate in the land—and as a tenant for life or in tail of an undivided share at the commencement of the L.P.A., 1925, has now no estate in the land, it is difficult to see how there can be any protector of the settlement. It would appear, therefore, that the consent of a person having a life interest in the proceeds of sale of an undivided share in land which by reason of the transitional provisions of the L.P.A., 1925, has been converted, notionally, into personalty is not necessary for an effective disentail by the person entitled in remainder.

I doubt whether this was intended, and the words "with the like results" seem to indicate the contrary, but it certainly seems strange that no mention is made in s. 130 of the L.P.A. of the "protector of the settlement." That, no doubt, was an oversight, but it may in many cases prove to have been an important one.

The difficulty which I see is that it may not be known whether a disentailing deed relating to the proceeds of sale of an undivided share in the proceeds of sale of land subject to the statutory trusts under the transitional provisions of the L.P.A., will or will not be effective if the person or persons having a life interest in the proceeds does or do not join.

I am inclined to think that in the state of things which I am considering no such joinder is required, but it is a doubtful point.

Landlord and Tenant Notebook.

Demolition by Local Authority.

THOUGH the contest was a somewhat one-sided affair, the recent case of *Popular Catering Association Ltd.* v. *Romagnoli* (1937), 1 A.E.R. 167, deserves attention, if only for the sake of the warnings it gives.

The claim, which was simply one for rent, arose as follows. The plaintiffs were mesne lessors and the defendant underlessee of premises in London, the term granted being some twelve years. The defendant had covenanted to keep the premises in repair, but the plaintiffs, besides covenanting for quiet enjoyment, had "covenanted" that the defendant should not be responsible for settlement in the structure, maintenance of the main timbers, walls or structure, or repairs required through age or decay, unless due to his negligence.

During the term, the demised premises became a "dangerous structure" within the meaning of the London Building Act, 1930. Section 132 authorises the county council in such circumstances to serve notice on the "owner or occupier" requiring him forthwith to take down, secure, or otherwise repair it as the case requires. Notices were served on the defendant and on the plaintiffs' lessor, demanding the demolition of the two upper storeys. The plaintiffs (who were in liquidation) were not served, but nothing turns on that; it was, in fact, once held, under an older statute, that the council need not serve everybody: *Debenham* v. *Metropolitan Board of Works* (1880), 6 Q.B.D. 112. The notices and further notices having been disregarded, the council exercised its rights under s. 133, which authorises it to do the work itself "with all convenient speed." After which, of course, it proceeded to collect, under s. 135, the expenses from the "owner": a term which, by s. 5, includes every person in possession of or in receipt of either the whole or any part of the rents or profits or any person in occupation otherwise than as tenant from year to year or for any less term than as tenant at will. But s. 135 concludes with the words "without prejudice to his right to recover . . . from any person liable."

Though, again, nothing turned upon the point, it is worth noting in an article of this kind that it is clearly the policy of the legislature to enable the local authority, in this and in similar cases, to get its money from someone able to pay, while saving contractual obligations, if any. The connotation of "owner" is in this case particularly wide, and s. 5 uses the verb "includes," not "means" or "shall mean"; in these two respects the county council is in even a better position than under the Metropolis Management Act, 1855, or under the Public Health (London) Act, 1891 (ss. 250 and 141 of which respectively define "owner" by reference to receipt of rack-rent).

In this case the council apparently had the choice of three persons. They called upon the defendant, who was occupier, to foot the bill, and he claimed to deduct the amount from rent. The deduction was apparently not questioned by the plaintiffs; I do not know why, for while the covenants cited may have exempted the defendant from liability towards them, I cannot see that any liability towards him was imposed upon his landlords.

But the defendant had a further grievance. Two storeys of what he had taken a lease of had gone; for, of course, the function of the county council is limited to such measures as will ensure safety. So he contended that he was entitled to have the rent or part of the rent suspended, relying on the ground of eviction by title paramount or on eviction due to the plaintiffs' default, and/or on the ground of frustration of the contract between the plaintiffs and himself. He also counter-claimed for damages for breach of covenant for quiet enjoyment.

No authorities were cited by the learned judge when rejecting these contentions. It is, indeed, obvious that the principles invoked could not apply. The "Notebook" dealt with the requirements of suspension of rent on eviction fairly recently—80 Sol. J. 278—and it is clear that the plaintiffs would only have had to say "*Paradine* v. *Jane* (1647), Aleyn, 26," to dispose of the point. An older authority, the facts of which afford a closer parallel, is *How* v. *Brown* (1601), Gouldsby 125; the difference being that in that case a landlord of a house and close pulled down the house. The lessee left but returned and occupied the close, and was held entitled to do so, rent free, it having been the folly of the lessor to impair the estate of the lessee.

All the recorded authorities on eviction go to show that, unless the conduct of the landlord has something to do with it, the tenant has no remedy. Presumably it was for this reason that the defendant's plea specified a default by the plaintiffs in carrying out their statutory duty. The matter is not discussed in the judgment, but it seems difficult to see how the statutory duty could have been established; if it had, there might well have been some remedy available to the defendant.

The suggestion that the doctrine of frustration could help the tenant was very tersely dismissed. If authority were needed, *Whitehall Court Ltd.* v. *Ettlinger* [1920] 1 K.B. 680, demonstrated very forcibly the inapplicability of that doctrine to leases. The same applies to the counter-claim. The interruption cannot be said to have been effected by the landlord or anyone claiming through him. It may be observed, however, that if the plaintiffs had been ordered to perform the work and had done so, then there is much to be said for the proposition that a breach of covenant of quiet enjoyment would have been constituted. The case of *Budd-Scott* v. *Daniell* [1902] 2 K.B. 351, showed that interruption occasioned by the performance of a statutory duty to paint, a duty which had escaped the memory of the landlord when subletting, rendered her liable under her covenant for quiet enjoyment. More in point is *Trotter* v. *Louth* (1931), 47 T.L.R. 335, for the claim arose out of alterations ordered under the then London Building Act. The landlord was the person served; he could have protected himself by giving the tenant notice of intention to enter under s. 192 of the then Act (of 1894) (now s. 214 of the 1930 Act), but, having omitted to do so, was held liable for breach of covenant for quiet enjoyment.

The moral is, of course, that tenants should employ surveyors and should otherwise protect themselves against misfortunes of this kind. By "otherwise," I mean, of course, by apt words in their leases. For an illustration of how this can be done, one can turn to *Lennox* v. *Curzon*: *Scott* v. *Lennox* (1906), 22 T.L.R. 611, C.A. In that case the lease of a theatre provided for suspension of rent whenever the theatre should be "closed by order of any superior authority." This was held to apply when a dangerous structure order was obtained by the London County Council, which made it impossible for the tenant to secure the Lord Chamberlain's licence.

Our County Court Letter.

MOTORISTS' INSURANCE AND LOSS OF USE OF CAR.

In a recent case at Shrewsbury County Court (*Turner* v. *General Accident, Fire and Life Assurance Corporation Ltd.*) the claim was for £50 under a comprehensive insurance policy, dated December, 1933. In May, 1936, the plaintiff's car was damaged in an accident, and the defendants undertook to repair it. They did so, and returned the car in five weeks, but the plaintiff considered other repairs were necessary. In all, he was deprived of the use of his car from May to September, and had had to hire another car, besides paying 'bus fares for himself and his family, and losing the profit on poultry and garden produce, which he was unable to take to market. The car was a 1929 model, which cost £100 (second hand) in 1933, and was now worth £30. The defence was that the policy provided that: "The Corporation shall not be liable to pay for loss of use." This was a complete answer to the action, but, on the claim that the plaintiff had been deprived of the use of his car for an unreasonable time, it was pointed out that the defendants, in trying to please the plaintiff, had paid a second engineer to do further work. His Honour Judge Samuel, K.C., remarked that the defendants had chosen the firm nearest the accident to do the repairs, but the plaintiff refused to take delivery until his own engineer had done further repairs. There was no evidence that an unreasonable time had been taken over the repairs, so as to override the exception in the policy as to loss of use, and the plaintiff had not suffered damage to the amount alleged. Judgment was given for the defendants, with costs.

THE TITLE TO CLUB PROPERTY.

In *Camp* v. *Fry*, recently heard at Barnstaple County Court, the claim was for the return of certain forms, tables, etc., or £5 18s., their value, and for £2 as damages for their detention. The plaintiff's case was that the furniture was borrowed by the defendant, who paid 2s. 6d. for the hire, but did not return the articles. The defence was that the forms were the property of the East Down Whist Drive Committee, of which the plaintiff was merely the honorary secretary and treasurer, and therefore he had no right to sue personally. It was contended for the plaintiff that the defendant was estopped from disputing the title, although that could be upheld by the plaintiff—if a proper action were brought. His Honour Judge Wethered observed that there was a dispute as to who had paid for the articles, but there was no jurisdiction to decide that point in the present case. A contract of hire had been entered into, and should have been carried out by the defendant. The question of ownership was one to be fought out between the plaintiff and the committee. It was sufficient if a plaintiff showed that he was entitled to the possession of goods, without necessarily being the owner. Judgment was given for the return of the goods in one week, and for 1s. damages for detention, with costs.

THE REMUNERATION OF HUNTSMEN.

In the recent case of *Fryer* v. *Joynson*, at Lichfield County Court, the claim was for £16 19s., as the price of a new hunting outfit. The case for the plaintiff was that in April, 1935, he was engaged as whip and kennel huntsman to the South Staffordshire Hunt. His remuneration was agreed at £2 a week, free use of cottage, lighting, coal, etc. The custom also was for the master (viz., the defendant at the date in question) to supply the whip with a new coat at the beginning of the hunting season, and in November, 1935, the plaintiff was promised £5 and the balance later. This was not forthcoming, and the plaintiff renewed his application in April, 1936, but the defendant gave up the hunt in May, 1936, without having complied with the plaintiff's request. The present master had supplied the plaintiff with a new outfit for the present season at a cost of £27, for which a certain amount had been allowed by the hunt, as usual. The defendant's case was that he had supplied the plaintiff with a hunting cap, two pairs of breeches, a pair of boots and a coat, which the plaintiff refused to wear, as it was old. No contract was made, but it was usual for the master to supply the whip with such clothes as were necessary for the hunting field, and the defendant had complied with the custom. His Honour Judge Ruegg, K.C., gave judgment for the plaintiff for £14 9s. and costs.

Land and Estate Topics.

By J. A. MORAN.

Auction sales continue to increase, and the persistence of the competition in the London Auction Mart and the leading centres of exchange all over the country supports the general belief that the coming spring season will top the average of the past few years.

The prices that continue to be paid for freehold ground rents, at auction, compare very favourably with current quotations for gilt-edged securities. Ground rents on London suburban houses, equivalent to one-seventh of the gross assessments, with reversion in forty-three years, have just been sold at a price that yields no more than £2 13s. 3d. per cent. This may seem small when compared with the yield on, say, Local Loans Stock, but it is well to remember that the ground rent is bound to go up in value as the reversion to the rack rental approaches. Further, it is not likely to suffer depreciation owing to troubles abroad or political complications at home.

How to lessen the danger of air raids to the civil population is a subject receiving much attention just now. There is no doubt it is wise to reflect on the possibilities that may arise in case of another European upheaval in which this country is engaged. But when it comes to suggesting, as Colonel Garforth did, in a Paper read before the Chartered Surveyors' Institution, that the windows of new houses should be smaller and the sills of the windows of the ground floor windows higher than usual, it is time to take stock of the position. Small windows, it is true, may be safer than large ones, but who wants them when doctors are clamouring for more air and sunshine; and what speculative builder will risk a sale by raising the sills of his ground floor windows? To have one's nerves unstrung by a daily reminder of the prospect of an appalling calamity is not desirable, and it should not be beyond the wit of the authorities to devise some better means of lessening the havoc wrought by hostile air raids.

The decision of the King's Bench Divisional Court that every loudspeaker installed in a block of flats, and worked from a central wireless set provided by the landlord, is liable to the payment of the annual licence of ten shillings was not unexpected; and I have good reason to believe that many flat-dwellers, with their own idea of what is, or is not, worth "receiving" from the B.B.C., welcome the ruling.

The Property Investment Society, registered under the Industrial and Provident Society Acts, has been wooing the small capitalist, and, apparently, not in vain, as the number of such societies has grown from 61 to 146 in the past four years. These societies buy, build, manage and deal in real property—a form of enterprise concerning which, of course, there is nothing to be said. But since they are not required to publish information which would enable investors to judge exactly what security is being offered for their money, it is not surprising that an agitation is on foot to tighten up the regulations so that they conform to the provisions of the Companies Act.

A suggestion that the Government should introduce a compulsory scheme of insurance against war risks, for the protection of property owners, was made by Sir John W. Lorden at the annual dinner of the National Federation of Property Owners and Ratepayers. He thought that a compulsory scheme could be established at a rate of from fourpence to sixpence per cent., which neither the insurance companies nor Lloyd's would entertain.

Not a small proportion of our old parsonages are in a bad way. Nobody seems to want them; and what to do with them is a problem that appears to be very far from solution. As a rule, vicars cannot afford the heavy expense their maintenance entails, and agents find it only waste of time to look for a tenant of a large, very dull, and out-of-date habitation. It has been suggested that a parsonage would, if let in rooms, afford residential accommodation for old married couples, but I am inclined to think the place would be too dull for their limited activities.

Jerry building is, by no means, a new institution. Tablets in the British Museum give fragments of a Babylonian code that must have put the wind up the dishonest craftsmen of that period. I commend the following to present-day offenders: "If a builder has built a house for a man, and his work is not done properly, and a wall shifts, then that builder shall make that wall good with his own silver."

The development of an improved form of constructional design in buildings so as to eliminate noise, is urged in the report of the Building Research Board. This shows that trials are in progress on a framed building at the research station, carried out on the principle that the construction should be such as to confine the noise inside the room in which it is made. The dwelling is designed as a box inside the structural framework, and is acoustically insulated from it.

Many acres of old Crown property east of Albany Street, Regent's Park, will be transformed into vast blocks of modern flats and streets of shops when a re-modelling scheme, now being carried out by the Crown Commissioners, is completed.

To-day and Yesterday.

LEGAL CALENDAR.

15 FEBRUARY.—In his day, Mr. Serjeant Vaughan combined a highly successful practice with a rich coarseness of diction and manner, unique at the Bar. Here is a specimen of his style in cross-examination, noted in the Common Pleas on the 15th February, 1826, just a year before he became a judge. A witness stated that he dealt in hemp. Vaughan: "I am sorry to hear, sir, that you deal in hemp." (Laughter.) Witness: "I dare say you are, sir, for I make ropes to hang lawyers." Vaughan: "I hope, sir, that you will keep a little for your own use, for you are very likely to want it." Witness: "I shall save enough for you, sir, at all events."

16 FEBRUARY.—On the 16th February, 1793, Lord Chief Justice Kenyon made an important pronouncement with regard to attornies. He said that "he verily believed that the majority of attorneys were honourable men and of service to the community, but there were many others who were the greatest pests of society. He desired attorneys to take notice that they were bound to give their clients the best advice in their power . . . If an attorney instead of honestly and fairly advising his clients advised them to prosecute groundless or frivolous actions for the sake of the costs, all such attorneys would be compelled to pay the expenses themselves."

17 FEBRUARY.—The career of Thomas Thorpe, Baron of the Exchequer, fell in the troublous times of the Wars of the Roses. His way lay across battlefields and through prison, as well as in the paths of the law, and, eventually, his devotion to the Lancastrian cause cost him his head on the 17th February, 1461. The blend of the legal, the political and the military in his activities well illustrates how much later than the Justices of the King's Bench and the Common Pleas did the Barons of the Exchequer assume a purely judicial character.

18 FEBRUARY.—The case of *Wyse* v. *Lewis*, heard in the Irish Common Pleas, on the 18th February, 1864, is worth a note of commemoration, because Madame Bonaparte Wyse, the plaintiff, was a cousin of Napoleon III, then Emperor of the French. A dispute over the will of her late husband, Sir Thomas Wyse, had brought her to Dublin, where the defendant was her solicitor. She had given him money to discharge certain bills which he had failed to meet, and, on her next landing, the Emperor's cousin was arrested by her creditors. She now sued the solicitor for damages, and Monaghan, C.J., and a jury awarded her £400.

19 FEBRUARY.—On the 19th February, 1601, the Earl of Essex was brought to trial for treason, in Westminster Hall, after the absurd fiasco of his attempted rebellion. Twenty-five peers and nine judges sat to try him and he was refused permission to challenge even those who were his personal enemies. The sensation of the case was Francis Bacon's speech for the prosecution, for he and the Earl had formerly been fast friends, and now he did more than anyone else to bring him to the block.

20 FEBRUARY.—Lord Keeper Bacon, the father of the great Francis, died at York House by Charing Cross, on the 20th February, 1579.

21 FEBRUARY.—On the 21st February, 1890, all the judges of England gathered in the Lord Chief Justice's Court to bid farewell to Mr. Justice Field on his retirement which advancing age and increasing deafness made inevitable. The scene was very affecting, for in his speech the old judge humbly admitted his faults of temper and the infirmity of hearing which had often caused inconvenience to counsel and witnesses. The warm friendliness of the cheers which crowned his words of good-bye showed, however, how well the Bar loved him.

THE WEEK'S PERSONALITY.

At the age of sixty-nine, Lord Keeper Bacon, the father of the great Francis, was, despite his corpulence, in remarkably good health and he might have lived for many years more but for his barber. One abnormally warm day in February, he was sitting near an open window, having his hair cut and his beard trimmed, when he fell asleep. The barber, desisting from his task, waited for him to awake of his own accord, leaving him so long in a draught that he took a chill. On regaining his senses, the Lord Keeper asked him: "Why did you suffer me to sleep thus exposed?" "I durst not disturb you," answered the man. "By your civility, I lose my life," said his patron, and so it proved, for he was carried to his bed immediately and died in a few days. "A man of great diligence and ability in his place, whose goodness preserved his greatness from suspicion, envy and hate," so wrote a contemporary. To his corpulence there are many allusions, and Queen Elizabeth once declared: "Sir Nicholas's soul lodges well." His portrait in Gray's Inn Hall does full justice to his figure, and to his shrewd intelligent face, in which intellect overcomes ugliness.

ROPE FOR COUNSEL.

Recently even the spectacle of Mr. Norman Birkett, K.C., pleading for a murderer in the Court of Criminal Appeal with the fatal rope which his client was said to have used coiled twice round his neck in demonstration of an ingenious theory failed to move the judges to allow the appeal. Such vivid demonstrations are comparatively rare and are always unforgettable. Perhaps the strangest and most effective of them all was given by Mr. Justice Scrutton in trying the "Brides in the Bath" murderer. To show how the man might have drowned his wife without a struggle at the moment when she was going to enter a bath by pretending to lift her affectionately in—and then holding her knees up, he rose from his seat and went through the very gestures. His masterly dumb show proved fatal to the prisoner. Nothing like it had ever had a place in a summing-up, and it was the subject of considerable controversy. Though the murderer's appeal was dismissed, the Lord Chief Justice expressed the opinion that it would have been better if the learned judge had not put forward his own speculations as to the manner of the killing.

A VIVID DEMONSTRATION.

No less effective was Marshall Hall's famous re-enactment of the scene in which Prince Fahmy was shot, at the trial of Madame Fahmy for killing him. His crouching, stealthy movements as he described the man's menacing advance upon his wife, his display with the fatal pistol suddenly pointed at the jury and then dropped rattling on the floor of the court produced a tremendous effect on all who saw it. Afterwards, discussing the case, he told how, while he was demonstrating with the weapon, he found himself pointing it at the judge and thought: "Suppose a cartridge were still left in the magazine and I were to pull the trigger and kill the judge!" As he said, he would indeed have ended his career at the Bar in a blaze of glory. But, he contended, he would have had a perfectly good defence. He would have said the same thing had happened to him as had happened to Madame Fahmy, and they would both have got off. As it was, her triumphant acquittal was fortunately a single one.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1, on Thursday, the 25th February, at 8.30 p.m., when a paper will be read by Mr. Paul C. Davie, Barrister-at-Law, on "Silicosis: An administrative experiment." Members may introduce guests to the meeting on production of the member's private card. Arrangements have now been made for the provision of light refreshments at the conclusion of each meeting.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

The New County Court Rules and the Lancaster Palatine Court.

Sir,—The reference by the President of The Law Society, reported on p. 120 of the issue of "The Solicitors' Journal," for the 6th February, to the Lancaster Palatine Court as an "inferior court," to which it was feared creditors might resort in order to defeat the purpose of the new County Court Rules designed to prevent them from suing in a court at which the defendant could not attend, calls for comment.

First, the Chancery Court of Lancashire is not an "inferior" court (see e.g., Judicature Act, 1925, s. 209), and within Lancashire it has the like jurisdiction in all respects as the Chancery Division of the High Court. Secondly, it is not a debtors' nor even a common law court, but a Chancery Court, and proceedings to recover debts, if taken in the Palatine Court, would meet with the same fate as similar proceedings commenced in the Chancery Division of the High Court. Thirdly, its jurisdiction is limited to the County of Lancaster, so that a defendant who cannot be served in Lancashire cannot be sued in the court except with his own consent.

Since the remarks of the President may have caused some misapprehension as to the character and status of the court, a few observations on it may be of interest to your readers.

The jurisdiction dates back (at latest) to a Charter of Edward III in 1351.

The special Acts dealing with the court are the Chancery of Lancaster Acts, 1850, 1854 and 1890. Many general Acts also deal with the court; for instance, the Administration of Justice Act, 1928, s. 14, deals with the position of the Vice-Chancellor (who is the judge) and (*inter alia*) provides that he shall take precedence next after the judges of the High Court.

Many eminent lawyers have been judges of the court: for instance, two Lord Chancellors, Lord Hatherley and Lord Westbury, and also Lord Justice James had been Vice-Chancellors of the County Palatine. A few years ago three of the six Chancery judges had been juniors at the Palatine Bar: Neville and Astbury, JJ., and Lawrence, L.J. Nearly all the Chancery judges and some of the King's Bench judges during the last forty years have at times appeared in the court. The present Lord Chancellor appeared there in what was possibly one of the heaviest cases he had at the Bar, being led by Sir Leslie Scott and opposed by Sir John Simon, Sir Patrick Hastings, Sir Rigby Swift, and several other King's Counsel. Lord Tomlin's last brief was in the Palatine Court.

There are Registries at Manchester, Liverpool and Preston, with a sub-office at Blackburn. There is a strong Chancery Bar, whose members, with chambers in Manchester, Liverpool or Preston, practise regularly in the court. The leader of the Palatine Bar is the Attorney-General of the Duchy, who is at the present time also the President of the Bar Council. Nearly all the Chancery work of Lancashire and, by consent, much work from the adjoining counties comes to the Palatine Court.

The court is not only very ancient, it is also very much up to date. For instance, until 1933 the delivery of statements of claim in the High Court was regulated by order, and not by rule as it is now, and as, in the Palatine Court, it has been since 1884. Moreover, the court has had official shorthand writers for over forty years, and all witness-actions since 1920 have been tried on fixed dates.

It is hoped that the foregoing will satisfy those interested that, even if the Palatine Court has the power, it is very unlikely to have either the time or the inclination to assist creditors to defeat the purpose of the new County Court Rules.

King Street, Manchester. 9th February. R. A. FORRESTER.

Obituary.

SIR GEORGE SHEDDEN.

Sir George Shedden, barrister-at-law, died at East Cowes, on Sunday, 14th February, at the age of eighty. He was educated at Blackheath School and Trinity College, Cambridge, and was called to the Bar by the Inner Temple in 1883. He was appointed a county magistrate in 1887, and he was chairman of the Isle of Wight County Bench for sixteen years. He resigned about two years ago on account of ill-health.

SIR DUNCAN GREY.

Sir George Duncan Grey, LL.D., Lond., solicitor, of Weston-super-Mare, died at Esher, Surrey, on Sunday, 14th February, at the age of sixty-eight. He was admitted a solicitor in 1891, and in 1923 he was knighted for political services. He was president of the Weston-super-Mare Conservative Association and an alderman of Somerset County Council since 1925. Sir Duncan Grey was also a vice-president of Somerset Rugby Union.

MR. L. F. POTTS.

Mr. Leonard Francis Potts, barrister-at-law, of Old Square, Lincoln's Inn, died at Ham Common, Surrey, on Saturday, 13th February, at the age of seventy-seven. Mr. Potts was called to the Bar by Lincoln's Inn in 1885.

MR. W. SENIOR.

Mr. William Senior, barrister-at-law, died at his home at Chelsea, S.W., on the 28th January, at the age of seventy-five. He was educated at Clare College, Cambridge, and practised for a time as a solicitor at Wakefield. In 1896 he was called to the Bar by the Middle Temple, and joined the North Eastern Circuit.

MR. J. B. BARLOW.

Mr. John Bennet Barlow, solicitor, of Clacton-on-Sea, died on Saturday, 6th February, at the age of sixty-six. Mr. Barlow was admitted a solicitor in 1894. After practising in London for some time, he went to Clacton in 1922. He acted as political agent to Mr. A. E. Hillary, who became Liberal Member of Parliament for the Harwich Division.

MR. F. BURTON.

Mr. Frank Burton, solicitor, of Great Yarmouth, died at his home at Beccles on Tuesday, 16th February, in his eighty-ninth year. Mr. Burton was admitted a solicitor in 1871.

MR. R. L. G. DAVIES.

Mr. Ronald Lindesay Griffith Davies, solicitor, of Presteign, died on Tuesday, 9th February. Mr. Davies, who was admitted a solicitor in 1927, was clerk to Presteign Urban District Council.

MR. A. V. L. HADAWAY.

Mr. Albert Victor Leopold Hadaway, solicitor, senior partner in the firm of Messrs. Hadaway & Hadaway, of Newcastle-upon-Tyne and North Shields, died in a nursing home at Newcastle on Monday, 8th February, at the age of forty-nine. He was admitted in 1911.

MR. H. G. S. WILLIAMS.

Mr. Henry George Swayne Williams, retired solicitor, of London, died recently at his home at Wokingham in his eighty-third year. Mr. Williams, who was educated at Wellington and Trinity College, Cambridge, had lived at Wokingham for the past twenty-five years.

Mr. W. GEORGE, solicitor, of Wellingborough, has been appointed a trustee of the George Lawrence Charity at Wellingborough in succession to his late partner, Mr. T. J. Morgan. Mr. George was admitted a solicitor in 1906.

Notes of Cases.

Judicial Committee of the Privy Council.

Maritime Electric Company, Limited *v.* General Dairies, Limited.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Alness and Lord Maugham.
8th February, 1937.

New Brunswick—Public Utility Company—Suppliers of Electricity—Consumer Under-charged—Right of Supplier subsequently to Recover Balance—Estoppel—Public Utilities Act of New Brunswick (R.S., 1927, c. 127).

Appeal, by special leave, from a decision of the Supreme Court of Canada, reversing a judgment of the Appeal Division of the Supreme Court of New Brunswick, affirming a judgment of the King's Bench Division, awarding the plaintiff-appellants $1,932 as the balance of the contract price of electricity supplied to the defendant-respondents. The appellants were a private company which sold electrical power to the City of Fredericton, New Brunswick, but were a "public utility" company within the meaning of the Public Utilities Act of New Brunswick (R.S., 1927, c. 127). The rates, tolls and charges which they could make and exact were limited in accordance with schedules. Through error by the appellants in computing accounts from December, 1929, to March, 1932, the respondents were charged with only one-tenth of the electric energy supplied to them. The respondents, at the material times, carried on a dairy business in Fredericton. They bought electric energy from the appellants. They paid to those from whom they bought cream a price depending, among other things, on the cost of manufacture of butter, ice cream, and other milk products, the cost of electric energy being a material factor in that cost. As a result of the wrong charge the respondents paid much more for the cream than they could have paid if the amounts now claimed for electric energy had been claimed at the due time.

Lord Maugham, delivering the judgment of the Board, said that the respondents' defence was that of an estoppel raised on the agreed facts. To the plea of estoppel, it was contended by the appellants, *inter alia*, that, apart from any other reason, estoppel was barred or precluded by the provisions of the Public Utilities Act. "A party," it was contended (citing 13 "Halsbury," 2nd ed., p. 474, s. 542), "cannot by representation any more than by any other means, raise against himself an estoppel so as to create a state of affairs which he is under a legal disability of creating." That contention, if sound, would suffice to defeat the estoppel and to entitle the appellants to judgment. In their lordships' opinion the point was of considerable difficulty and importance. The problem had been admirably stated by Dysart, J., as being whether the duty here cast by statute on both parties, namely to charge and pay, respectively, for electric energy could be defeated and avoided by a mere mistake in the computation of accounts. The answer to that question in the case of such a statute as was now under consideration must be in the negative. Where, as here, the statute imposed a duty of a positive kind, not avoidable by the performance of any formality, for the doing of the very act which the plaintiff sought to do, it was not open to the defendant to set up an estoppel to prevent it. That conclusion must follow from the circumstance that an estoppel was only a rule of evidence which, in certain special circumstances, could be invoked by a party to an action. It could not, therefore, avail in such a case to release the plaintiff from an obligation to obey such a statute, nor could it enable the defendant to escape from a statutory obligation of such a kind on his part. It was immaterial whether the obligation was onerous or otherwise to the party suing. The duty of each party was to obey the law. To hold, as the Supreme Court had done, that in such a case estoppel was not precluded, since, if it was admitted, the statute was not evaded, appeared to their lordships, with respect, to approach the problem from the wrong direction. The Court should first of all determine the nature of the obligation imposed by the statute, and then consider whether the admission of an estoppel would nullify the statutory provision. Their lordships were unable to see how the court could admit an estoppel which would have the effect *pro tanto* of repealing the statute. It must be admitted that reported cases in which the precise point now under consideration had been raised were rare. It was, however, to be observed that there was not a single case in which an estoppel had been allowed in such a case to defeat a statutory obligation of an unconditional character.

The appeal must be allowed.

Counsel: *Harold Murphy*, K.C., and *Frank Gahan*, for the appellants; *Sir Robert Aske*, K.C., and *W. L. McNair*, for the respondents.

Solicitors: *Charles Russell and Co.: Edward D. K. Busby.*

[Reported by R. C. Calburn, Esq. Barrister-at-Law.]

Court of Appeal.

Culver *v.* Beard.

Greer, Slesser and Scott, L.JJ.
11th and 12th January, 1937.

Practice—Action in respect of Personal Injuries—Transfer from High Court to County Court—Plaintiff Poor Person—County Courts Act, 1919 (9 & 10 Geo. 5, c. 73), s. 2.

Appeal from a decision of Horridge, J.

The plaintiff, suing as a poor person, brought an action in the High Court for damages for serious personal injuries, possibly involving permanent incapacity. On a summons in the New Procedure list, Horridge, J., made an order under s. 2 of the County Courts Act, 1919, for transfer to the County Court.

Greer, L.J., dismissing the plaintiff's appeal, said that under the section, if the judge considered all the circumstances of the case, it was left to his discretion to say whether the case should be transferred. The discretion must be exercised by the judge to whom it was given (*Donald Campbell & Co.* v. *Pollak* [1927] A.C. 732). "The court or judge" meant the court or judge to whom the application was made, and not the Court of Appeal. Because the Court of Appeal differed from him, if it did differ, it should not, on that account, allow the appeal, provided the judge had considered all the circumstances of the case. Further, under the section, the order made was one for remission to the County Court, which could be avoided if the plaintiff gave security. It was not an order that he should give security, but one that if he did not do so the case should be remitted. It was not possible to say that the section meant that an order could not be made except in cases where an order for security for costs could be made, because the effect of that would be that in every poor person's case no order for remission could be made. His lordship referred to *Cook* v. *Imperial Tobacco Co.* [1922] 2 K.B. 158; *Bottomley* v. *F. W. Woolworth & Co. Ltd*, 48 T.L.R. 521; *Stevens* v. *Walker* [1936] 2 K.B. 215; *Farrer* v. *Lowe*, 53 J.P. 183, and *Owens* v. *Woosman*, L.R. 3 Q.B. 469, and added that he did not mean to lay down that when a plaintiff was without means of necessity there should be an order for remission. There were many cases where the allegations were so serious and the questions so difficult that the case should remain in the High Court.

Slesser and Scott, L.JJ., agreed.

Counsel: *E. Howard*; *Fearnley-Whittingstall.*

Solicitors: *Edgar H. Hiscocks*; *William Easton & Sons.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

County Valuation Committee for the County of Middlesex *v.* **Assessment Committee for the West Middlesex Assessment Area.**

Lord Wright, M.R., Romer and Greene, L.JJ. 22nd January, 1937

LOCAL GOVERNMENT—ASSESSMENT COMMITTEE—REPRESENTATION OF COUNTY VALUATION COMMITTEE—RIGHT TO ATTEND—RATING AND VALUATION ACT, 1925 (15 & 16 Geo. 5, c. 90), s. 18.

Appeal from a decision of Farwell, J. (80 SOL. J. 719).

The plaintiffs directed their county valuation officer, or some duly authorised representative, to attend the meetings of the defendants during the hearing of all objections to draft valuation lists and all proposals to amend current valuation lists, both to inform himself of what took place and to tender information or advice and otherwise to take part in the proceedings. The defendants claimed the right to exclude him, and in this action the plaintiffs sought a declaration that he was entitled to attend. Farwell, J., gave judgment for the plaintiffs.

LORD WRIGHT, M.R., dismissing the defendants' appeal, said that the writ asked for a declaration that the plaintiffs by their county valuation officer were entitled to attend the meetings in question. No declaration was asked on wider questions, such as whether that officer would be entitled to take part in the proceedings if he were admitted, except in so far as he was acting under the various specific provisions of the Rating and Valuation Act, 1925. The contest arose under s. 18 (2). It had been argued that under the section there was a power or right for the county valuation officer to be present at the meetings, but against this it had been said that under para. 1 of Sched. I the defendants had a right to regulate their proceedings, and that this included the power to exclude the officer. But their right was subject to the provisions of the Act, and if under s. 18 (2) the officer had a right to be present the defendants' power to regulate their own proceedings could not operate to exclude him. There were many assessment areas in every county, and the words relied on as giving the county valuation committee the power to attend by its officer were the general words setting out the duty to take such steps as it thought fit to promote uniformity in the principles and practice of valuation, and to assist assessment committees and rating authorities in the performance of their functions. The duty of the plaintiffs was to see that there was not disuniformity as between one assessment area and another, nor an unfair distribution of the burden of taxation over the different parts of a county. It was argued that it was necessary for the performance of this duty that the plaintiffs should have knowledge of the proceedings before the various assessment committees. His lordship referred to the powers given to the county valuation committee by ss. 40 (6), 38 and 55, and said that he agreed with the plaintiffs' argument. The power of being present, however, did not extend to being present at the deliberations of the assessment committee when it was arriving at a decision (see *R.* v. *Assessment Committee for North-Eastern Area of Surrey* [1933] 1 K.B. 776, a case in which the reporter had stated the effect of the decision too widely; the words "hearing the proposal or" should be struck out). There were other provisions in the Act giving the county valuation committee power to take an active part in the proceedings, as in s. 18 (3), but that was quite distinct from the general power implied from s. 18 (2). There were other similar provisions in ss. 26, 27 and 37, the county valuation committee being given a specific power to appear and take an active part in the proceedings under certain conditions which had to be observed.

ROMER and GREENE, L.JJ., agreed.

COUNSEL: *Carr*, K.C., and *J. S. Henderson*; *W. E. T. Jones*, K.C., and *M. Rowe*.

SOLICITORS: *H. G. Greenwood*; *C. W. Radcliffe*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Brown *v.* **New Empress Saloons Ltd.**

Slesser and Greene, L.JJ., and Luxmoore, J. 10th February, 1937.

PRACTICE—PAYMENT INTO COURT—DENIAL OF LIABILITY—DAMAGES AWARDED LESS THAN AMOUNT PAID IN—JUDGE'S DISCRETION TO DEPRIVE DEFENDANT OF COSTS.

Appeal from a decision of Swift, J.

The plaintiff claimed damages for personal injuries received in a motor-car accident. After the commencement of the action, the defendants paid £1,500 into court with a denial of liability, though they had previously withdrawn their denial of negligence. The action proceeded and £1,000 damages were awarded. Counsel for the defendants mentioned the sum paid in and asked for judgment for the defendants with costs. Swift, J., gave the plaintiff costs up to the date of payment in and entered judgment for the defendants from the date of payment in without costs. In an explanatory note he said that in exercising his discretion he took into account the fact that money had been paid in and the amount, and did not consider absolutely immaterial matters nor any matters which had no connection with the case.

SLESSER, L.J., dismissing the defendants' appeal as to costs, said that it could not be held that there were no grounds on which the judge could exercise his discretion as he did. There was a denial of liability, and, therefore, there were other matters which might conceivably be in issue beyond the mere question of *quantum* of damage. If, on the issues which the defendants had left open at the trial, they had failed, it was in the judge's discretion whether or not they should be deprived of their costs.

GREENE, L.J., and LUXMOORE, J., agreed.

COUNSEL: *Sharp*, K.C., and *Englebach*; *S. Pocock*.

SOLICITORS: *Stanley & Co.*; *North & Son*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Boag *v.* **Standard Marine Insurance Co. Ltd.**

Lord Wright, M.R., Romer and Scott, L.JJ. 12th February, 1937.

INSURANCE (MARINE)—CARGO—EXCESS VALUE POLICY—TOTAL LOSS—CLAIMS PAID BY INSURERS AND INCREASED VALUE UNDERWRITERS—GENERAL AVERAGE ADJUSTMENT—SUM RECEIVABLE BY CARGO OWNERS—WHETHER INCREASED VALUE UNDERWRITERS ENTITLED TO PROPORTION—MARINE INSURANCE ACT, 1906 (6 Edw. 7, c. 41), s. 79.

Appeal from a decision of Branson, J. (80 SOL. J. 487).

A company, owners of a cargo of Italian wheaten sharps, insured it with the defendants by a policy dated the 19th September, 1934. Its c.i.f. invoice value was £636, but, owing to an advance in the price of wheaten sharps, it had at the intended port of discharge a net value of £890. The cargo owners also insured the cargo with a syndicate of underwriters at Lloyd's, of whom the plaintiff was a representative, by declarations made on the 28th September, 1934, against a floating increased value policy for £5,000. The cargo, shipped at Naples on the 17th September, had to be jettisoned during the voyage and was lost. In October, the cargo owners claimed in respect of the loss against the defendants, who paid the claim on the 5th November, the cargo owners handing them a letter of subrogation. The cargo owners also claimed against the increased value underwriters, who paid the claim in December, the cargo owners handing them a letter of subrogation. A general average adjustment having been prepared in June, 1935, the balance receivable by the cargo owners was £532, which sum was in the hands of the shipowners and the adjusters as trustees. The defendants claimed to be entitled under s. 79 of the Marine Insurance Act, 1906, to the whole of the £532 under

their subrogation rights. The plaintiff claimed to be entitled to £127 of that sum as representing the proportion of the general average allowance applicable to the increased value policy. He also claimed under his rights of subrogation. The defendants did not know of the existence of the increased value policy until after they had paid on the total loss. Branson, J., gave judgment for the defendants.

LORD WRIGHT, M.R., dismissing the plaintiff's appeal, said that the question was whether when goods were insured by the owners to the full extent of their value by a primary policy, and afterwards a supplementary insurance was taken out on the same goods for the amount of their increased value, and the goods were lost by being jettisoned so that the goods owners were entitled to be recouped in general average, each of the two sets of underwriters had claims to be subrogated in respect of the contribution so recovered by the goods owners—whether the underwriters on the primary policy were entitled to be subrogated in respect of the whole or had to share with the underwriters of the supplementary policy on increased value. The competition was between the two sets of underwriters. The point involved the construction of s. 79 of the Act. On its terms, his lordship agreed with Branson, J. It was an integral part of the primary policy that the defendants had a contingent right of subrogation vested in them when the policy was effected. The contingency had occurred, and the right had become vested. It would have been different if this had been a double insurance under s. 32. In that case, as the two sets of underwriters had to share the burden of the indemnity, so they shared the salvage in respect of which they were entitled to be subrogated in reduction of the indemnity. But here the increased value policy was effected by way of supplementary cover for the goods owner's convenience, and in order to take out an insurance over and above the first. The first insurance was on the whole of the subject matter for its full value as between the goods owners and the underwriters of the primary policy. Therefore, those underwriters were entitled to the full rights of the subrogation. Nothing entitled anyone to a reopening of the valuation or a supersession of the values as between the goods owners and the underwriters of the primary policy.

ROMER and SCOTT, L.JJ., agreed.

COUNSEL: *Cyril Miller; W. McNair.*

SOLICITORS: *Botterell & Roche*, agents for *Weightman, Pedder & Co.*, of Liverpool; *Ince, Roscoe, Wilson & Glover.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Berg *v.* Sadler & Moore.

Lord Wright, M.R., Romer and Scott, L.JJ.
15th February, 1937.

CONTRACT—PRICE-CUTTING—RETAILER PUT ON "STOP-LIST"—ATTEMPT TO GET GOODS FROM WHOLESALER BY ORDER SIGNED BY THIRD PARTY—PRICE PAID BY PLAINTIFF—WHOLESALER'S REFUSAL TO DELIVER SAVE TO PERSON WHO SIGNED ORDER—RETAILER'S RIGHT TO REFUND OF PURCHASE PRICE.

Appeal from a decision of Macnaghten, J. (80 SOL. J. 573).

In November, 1933, B, a retail tobacconist, agreed with the Wholesale Tobacco Trade Association that if he were supplied with tobacco and cigarettes manufactured by certain people he would only sell the goods to the classes of person named in the agreement. It was provided that if he broke the agreement he would be placed on the "stop-list." The object was to secure that retailers should charge the public a uniform price. It was later alleged that he had broken the agreement and he was put on the "stop-list." To his knowledge certain wholesale tobacconists, the defendants, had also entered into an agreement with the Association and were precluded from supplying him with tobacco and cigarettes. On the 29th August, 1935, the defendants received an order for cigarettes from one R, a person from whom he was able to obtain cigarettes on terms enabling him to re-sell them at a profit at a price lower than that prescribed by the manufacturers, and on the 30th August his assistant went with a man whom R described as his partner to the defendants' premises. B was aware that the defendants could not and would not supply him and that if he applied in his own name he would not get them. When his assistant asked for the goods ordered by R the previous day he was told they would be sent to R's address. He then demanded the return of £73 he had just paid across the counter, but the defendants refused. Macnaghten, J., dismissed an action by him to recover the money.

LORD WRIGHT, M.R., dismissing the plaintiff's appeal, said that it was unnecessary to consider such cases as *Pearce* v. *Brooks*, L.R. 1 Ex. 213, or *Scott* v. *Brown, Doering, M'Nab & Co.* [1892] 2 Q.B. 724. The plaintiff had paid the money to the defendants intending that the property in it should pass to them. He could only claim its return as money had and received and on the ground that it was contrary to what was *æquum et bonum* for them to retain it. But if he proved the circumstances in which the money was paid, he had to prove facts showing him to have been engaged in an attempt to obtain goods by false pretences. The court would not give its aid to a claim which could only be established by proving such facts (see *Simpson* v. *Bloss*, 7 Taunt. 246, at p. 250; *Kearley* v. *Thompson*, 24 Q.B.D. 742, at p. 745; and *Alexander* v. *Rayson* [1936] 1 K.B. 169, at p. 190). Moreover, the money sued for might be regarded as the instrument the plaintiff was using to carry out his unlawful purpose. The defendants had possession of the money under a contract tainted by fraud, so that so far as the plaintiff was concerned, they could rely on the principle *potior est conditio possidentis*. The court would not re-open the transaction or order the money to be repaid on the ground of failure of consideration. *Gordon* v. *Chief Commissioner of Metropolitan Police* [1910] 2 K.B. 1080, did not affect this conclusion.

ROMER and SCOTT, L.JJ., agreed.

COUNSEL: *Sharp*, K.C., and *Glyn-Jones; L. O'Malley.*

SOLICITORS: *Lamartine, Yates & Morgan; Russell & Arnholz.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Metropolitan Water Board *v.* Watkins.

Farwell, J. 14th January, 1937.

VENDOR AND PURCHASER—SALE OF STRIP OF LAND—LAND RETAINED BY VENDOR SEPARATED FROM HIGHWAY—COVENANT BY PURCHASER TO BUILD AND MAINTAIN BRIDGE—PIPES AND CABLES—WHETHER PURCHASER GIVEN RIGHT TO CARRY THEM OVER BRIDGE.

In 1897, certain agricultural land adjoining a highway was owned by the defendant's predecessor in title. It included (*inter alia*) an orchard and a bungalow. The Staines Reservoir Joint Committee, a statutory body and the predecessors in title of the plaintiffs, desiring to acquire part of the land for the purpose of making an aqueduct, then gave notice to treat. That part consisted of a strip immediately adjoining the highway from which it entirely separated the rest of the land. The purchase price was £1,000 and, in the conveyance dated 1899, the purchasers covenanted that they would "at their own expense erect and for ever thereafter maintain across the conduit intended to be constructed upon the land hereby conveyed a bridge of not less than thirty feet in width to connect the severed portion of the vendor's land with the Stanwell New Road." The bridge was duly built by the purchasers, other bridges built elsewhere across the conduit being only twelve feet wide. It was maintained by them and also by the plaintiffs. The defendant, having become owner of the severed portion, wished to develop it as a building estate, and, therefore, to use the bridge for the

purpose of carrying pipes and cables for the supply of water, gas, electricity and similar services. He contended that the purpose of the bridge being to connect the land with the road he was entitled to use it as a means of communication for any purpose he found necessary. The plaintiffs claimed a declaration that he had no interest in the bridge other than a right of way on foot or with vehicles, the only manner in which it had till then been used.

FARWELL, J., in giving judgment, said that the vendor's only right in the bridge was such as was reserved in the conveyance. The covenant therein could not be so construed as to give her the right to erect or maintain on the bridge anything in the nature of a permanent structure. In the absence of some words indicating that the purpose of the parties was more than merely connection, i.e., a means of getting from one side of the aqueduct to the other, the covenant could not be construed to entitle the defendant to lay pipes and cables. The declaration would not be in the form asked for by the plaintiffs, but it would be that the defendant was not entitled to lay such pipes and cables for any purpose on the bridge.

COUNSEL: *Hon. Stephen Collins*, K.C., and *W. Waite; Manning*, K.C., and *Squibb*.

SOLICITORS: *H. A. D. Collins; Candler, Sykes & Dore*, agents for *Garner & Hancock*, of Hounslow.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Iron Trades Employers' Insurance Association *v.* Union of House and Land Investors Limited.

Farwell, J. 20th January, 1937.

MORTGAGE—MORTGAGOR'S STATUTORY POWER TO GRANT LEASES—RESTRICTION IN DEED—LEASE GRANTED WITHOUT LESSOR'S CONSENT — EFFECT — LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), ss. 99, 152.

On the 1st October, 1935, the defendants mortgaged certain premises to the plaintiffs. In the deed they covenanted that they would not, except with the previous written consent of the mortgagees, "exercise the power of leasing or agreeing to lease or of accepting surrenders of leases conferred by the Law of Property Act, 1925, on a mortgagor while in possession." They also covenanted that "statements in writing, if required by the mortgagees, showing the lettings or underlettings of the property hereby charged for the time being in force," would be furnished at their expense every six months to the mortgagees' solicitors. It was provided that if the interest was duly paid and there was no breach of any obligation, statutory or otherwise, binding on the borrowers, or of any of the covenants to be observed by them, the mortgagees would not, before the expiration of ten years, require payment of the money secured. Subsequently, the defendants let part of the premises on a yearly tenancy without seeking the consent of the mortgagees. The letting did not purport to be made under the power conferred by the Act, nor to be binding on the mortgagees. The plaintiffs came to know of the letting when the secretary of the defendant company informed them of it on their requiring a statement showing the lettings and underlettings. In this action, they claimed that the letting was a breach of covenant and that the defendants were not entitled to grant leases without their written consent.

FARWELL, J., in giving judgment, said that before the Conveyancing Act, 1881, when there was a legal mortgage, the mortgagor, though in possession, could not grant leases binding on the mortgagee. Any lease he might attempt to grant was binding on him and, except against the mortgagee or any person having a title paramount to the mortgagee, the lease was good, but as against the mortgagee, the lessee had no estate or interest under the lease save that he had a right to redeem in the event of the mortgagor trying to evict him from possession. The Act of 1881 enabled a mortgagor in possession to grant leases binding on the mortgagee, subject to certain conditions. But that did not deprive him of the right he had apart from the Act to grant a lease which would not be binding on the mortgagee. His lordship considered the Law of Property Act, 1925, ss. 99 and 152, and said that it also did not destroy the right of granting such a lease. Further, by virtue of s. 99 (13), the parties could agree further terms apart from the provisions of the section. They might agree that the statutory powers should not be exercised or should be exercised in a wider or in a more restricted way than the section provided. When there was inserted, therefore, in a mortgage a covenant by the mortgagors that they would not without the consent in writing of the mortgagee exercise their statutory powers, the effect was to impose an additional term on the obligations contained in the Act itself, so that a purported exercise of the power for which no previous consent had been obtained was not an exercise of the statutory power at all. Now, if in granting the lease the defendants were not exercising the power given by the Act, they did not commit any breach of this covenant, but were only doing what they could have done apart from the Act, granting a lease not binding on the mortgagees. The position was not altered by s. 152 (6). The action could not succeed.

COUNSEL: *Vaisey*, K.C., and *R. Horne; Spens*, K.C., and *A. Berkeley*.

SOLICITORS: *Leslie Field, Prior & Co.; Mead, Sons & Bingham*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Union Transport Finance Ltd. *v.* Ballardie.

du Parcq, J. 17th December, 1936.

SALE OF GOODS—HIRE-PURCHASE—GOODS SOLD TO FINANCE COMPANY—GOODS HIRED BY COMPANY TO IMPECUNIOUS EMPLOYEE OF SELLER—TRANSACTION NOT KNOWN BY COMPANY TO BE FICTITIOUS—GOODS RETAINED BY SELLER —SUBSEQUENT RESALE TO DEFENDANT—PURCHASE MADE IN GOOD FAITH AND WITHOUT NOTICE OF PREVIOUS SALE —DEFENDANT'S RIGHT TO RETAIN GOODS AS AGAINST COMPANY—FACTORS ACT, 1899 (52 & 53 Vict. c. 45), s. 8.

Action tried at Leeds Assizes.

The plaintiff company carried on the business of buying motor-cars for cash and selling them under hire-purchase agreements. In May, 1935, one, Thom, a branch manager of the company, bought for and on behalf of the company a motor-car from one, Clark, a garage proprietor, who wished to obtain an advance from the plaintiffs. Thom paid to Clark a cheque for £180, i.e., £240, the price of the car less a first payment of £60, as provided by the hire-purchase agreement, but the car was thereupon hired to one, Felton, an impecunious employee of Clark. Clark, Thom and Felton were all aware that the transaction was unreal to the extent that Felton's part in it was never intended to be actual. Felton completed a proposal form for the hire-purchase agreement, and he executed an "acknowledgment of delivery." Felton also agreed with the plaintiffs that he would keep the car in his garage, although he lived at his master's house, which had no garage, and that he would not part with the possession of it. Such payments as were made to the plaintiffs under their agreement with Felton were made by Clark. Felton never had possession of the car, nor did he ever use it except on Clark's business. In August, 1935, Clark hired the car under a further hire-purchase agreement to the defendant, Ballardie, who took it in good faith and without notice of the transaction between Clark and Thom. The plaintiffs in due course brought this action to recover the car from Ballardie. *Cur. adv. vult.*

DU PARCQ, J., said that the defendant contended that s. 8 of the Factors Act, 1889, had the effect, in the circumstances, of giving him a good title. On the facts of the case, the words

of that section seemed to be satisfied exactly. It was, however, contended for the plaintiffs that answer to the defendant's argument was to be found in the principle applied by MacKinnon, J., in *Staffs. Motor Guarantee Ltd.* v. *British Wagon Co. Ltd* [1934] 2 K.B. 305, following *Mitchell* v. *Jones* (1905), 24 N.Z.L.R. 932. In his (his lordship's) opinion, those cases did not apply to the facts of this. In the latter case five judges of the Supreme Court of New Zealand had held that a section not materially different from s. 8 of the Act of 1889 did not apply to cases in which, the original sale having been completed by delivery, a different relation was subsequently created between the parties to it under another contract, as where goods were bailed or leased back to the vendor. Here, the sale to the plaintiff company was not completed by delivery. It was true that MacKinnon, J., in *Staffs. Motor Guarantee Ltd.* v. *British Wagon Co. Ltd*, *supra*, had extended the principle of that decision to a case where the original sale was not completed by physical delivery. He based his decision on the ground that the original vendor's possession of a lorry, at the time when the persons relying on the section made their bargain with him, was not the possession of a seller who had not yet delivered to the buyer the article sold, but was the possession of a bailee under a valid hire-purchase agreement made with that buyer. It was said for the plaintiffs that, in spite of all, Clark, Thom and Felton intended to enter into the transactions into which they purported to enter, and that, if that were so, Clark, after May, 1935, must have continued in possession of the car, not as a seller, who had not delivered it to the buyer, but as the bailee of Felton, who, being entitled to the possession of it, had acknowledged to the plaintiffs that he had taken possession of it. He (his lordship) did not accept that contention. It was a mistake to suppose that, because the plaintiffs had entered into a contract with Felton which gave him a right to possession of the car, the vendor at once became the bailee of Felton. It had been argued alternatively that Felton must be regarded as a mere nominee of Clark, and that consequently Clark was to be regarded as himself a party to the hire-purchase agreement, so that his position was the same as that of the vendor in *Staffs. Motor Guarantee Ltd.* v. *British Wagon Co. Ltd*, *supra*. The facts of the present case did not support that argument. Felton was not a nominee of Clark. The terms of the contract precluded it. It was a contract expressed to be "personal to the hirer," and the plaintiffs might well have refused to make such a contract with Clark. In his (his lordship's) opinion, the defendant was entitled to rely on s. 8 of the Act of 1889, and the disposition of the car in his favour must be taken to have had the same effect as if Clark had been expressly authorised by the plaintiff company to make it.

COUNSEL: *G. W. Wrangham*, for the plaintiffs; *M. L. Lyell*, for the defendants.

SOLICITORS: *Peacock & Goddard*, agents for *H. E. Ward & Co.*, Chesterfield; *H. Huband Harper*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Pacy and Another *v.* Field.

Hilbery, J. 15th February, 1937.

PERSONAL INJURIES—CHILD BITTEN BY DOG—ONE OTHER CHILD PREVIOUSLY BITTEN BY SAME DOG—TENDENCY TO BITE—DEFENDANT'S KNOWLEDGE OF—CIRCUMSTANCES OF PREVIOUS BITING—LIABILITY.

Action for damages for personal injuries.

The plaintiffs were a small boy, aged six years, suing by his father, and the father himself. The infant plaintiff, Victor Pacy, was walking with other children in charge of a nurse along the pavement of a public street. The plaintiff, Victor, was walking near the kerb. His brother, Joseph, had a small Cairn dog on the lead. As the party passed along the pavement on the opposite side of the road to the defendant's house, there came from that house, in charge of one, Cousins, two dogs, a spaniel and an Airedale, both the property of the defendant. Both dogs were being taken out for a walk by Cousins. Evidence was given for the plaintiffs that the Airedale bounded across the road, and knocked down and bit Victor, who sustained wounds in the face, including one under the chin which left a permanent scar.

HILBERY, J., said that he accepted the evidence given for the plaintiffs as to how the incident had occurred. He (his lordship) thought that Cousins had not a clear enough impression of the incident to be able to give an account of it on which the court could rely. Fifteen days previously the Airedale had bitten a small boy not unlike Victor in stature. On each occasion there was a small boy and the dog bounding towards him and going for some part of the face or head. In each case the dog had been excited. He (his lordship) thought that the right conclusion was that it had developed a liability to bite little boys. It was true that it could not be enough to affect the defendant with liability to the plaintiff to prove that the dog on another occasion had bitten a human being. It must be an occurrence which showed that the dog had developed a tendency to bite people of a class or type. The owner of the dog, when told of the earlier incident, adopted an attitude which anyone would be prone to adopt. He was loth to admit that the dog which he knew so well as an ordinary gentle dog was developing a tendency to bite small boys. But it was possible for a dog to develop a tendency of that kind while remaining quite docile towards the rest of human kind. The defendant was therefore put in a position of having notice that the dog was liable to bite small boys. He kept the dog, in his (his lordship's) opinion, while having that knowledge. That affected him with liability. The damages were not serious. He would award the child £35 and the £2 10s. special damages to the father.

COUNSEL: *Leslie Brooks*, for the plaintiffs; *S. K. de Ferrars*, for the defendant.

SOLICITORS: *Raymond Oliver & Co.*; *Bircham & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page xix of Advertisements.]

Reviews.

Salmond's Law of Torts. Ninth Edition. 1936. By W. T. S. STALLYBRASS, D.C.L. Demy 8vo. pp. lvi and (with Index) 716. London: Sweet & Maxwell, Ltd. £1 10s. net.

The editor apologises for producing a new edition of this book so soon after the last. He need not do so. The Law Reform (Miscellaneous Provisions) Act, 1934, and the Law Reform (Married Women and Tortfeasors) Act, 1935, are, by themselves, enough to justify a fresh edition, and when one reads the book and notes the great number of pages on which cases, not in the last edition, are quoted, the advantage of having a really up-to-date book becomes all the more obvious. The book has, in this edition, even more than in the last, become the work of the learned editor and not of Sir John Salmond. No sensible person will complain of this, for the book is one of the select few used and quoted with equal profit by students, practitioners and judges. The editor has recognised his responsibility and has tried to make the book a statement of the law as applied in the courts, and not merely the views of a great mind as to what the law ought to be. He does not, however, hesitate to say where, in his view, the present law ought to be changed. "Salmond on Torts" won its reputation by the clarity and vigour of Sir John Salmond's writing, the skill of his analysis and his championship of the opposite view to that of Sir Frederick Pollock. It should not lose it by being allowed to become out of date.

The close relationship between British and American common law is still more emphasised in this edition. References to the American re-statement of the law of torts have been included, but only where they go to elucidate existing statements of our law. It is unfortunate that the book should have appeared at a time when several cases of importance to this branch of the law are on their way to the House of Lords. It is, however, not easy to choose a moment for publication when there are no important cases engaged on that leisurely journey. The misfortune must be regarded as inevitable and as mitigated by the fact that it provides the first materials for a tenth edition.

Three branches of the law of torts seem to be in particularly active development at the moment: (1) The law as to shortening a person's expectation of life, bound up with the question of damages for the pain and suffering of a deceased person; (2) the law as to injury to rescuers, in which the learned editor traces academic and American influences; and (3) the law as to the question "who, then, in law is my neighbour?"—*Donoghue* v. *Stevenson* [1932] A.C. 562, per Lord Atkin, at p. 580, which has come into prominence since this case of the "snail in the bottle," that square peg which practitioners have since been trying to fit into so many round holes. These are all fully and critically discussed.

It is interesting to notice that the judgment of Willes, J., in *Indermaur* v. *Dames*, L.R. 1 C.P. 274, 288, is still said to contain an ambiguity as to whether the duty of an occupier to an invitee is to take care to make the premises reasonably safe or merely to use care to warn of dangers. It is true that there is a conflict of authorities resulting from this judgment, but it does seem that the judgment, at the end of the often quoted passage, treats the duty discharged by doing either, for Willes, J., says that the care can be taken by "notice, lighting, guarding or otherwise." Between "warning" and "notice" there does not seem to be very much difference. As is pointed out, the difference of view is seldom of much practical importance, but it is submitted that there may really be no such ambiguity as has been thought.

One other matter is perhaps of some academic interest. There is a statement, p. 556, note (*u*), that the doctrine of the *scienter* in animal cases is peculiar to English law. This must be intended to refer to modern systems of law and not to be a statement of general application. Otherwise it seems to take no account of something which looks remarkably like the same doctrine, namely, that expressed in Exodus, xxi, 29–36, and referred to in the notes to *Card* v. *Case*, 5 C.B. 622, 627.

The conscientious reviewer should not further air his own views. He should give his honest opinion of the book, having first read it, referring, perhaps to one or two details to show that he has read it. No one, whatever his views, who does this can fail to have the same opinion, namely, that the book is thoroughly good.

Handbook on the Practice of the County Courts, with Precedents of Bills of Costs. By JAMES EDWARD SPICKETT, Solicitor, Registrar of Pontypridd County Court. Second Edition. 1936. Demy 8vo. pp. xvi and (with Index) 272. London: Jordan & Sons, Ltd. 10s. net.

This new edition opportunely provides practitioners with a competent outline of the new procedure. The chapters on such matters as Workmen's Compensation and Bankruptcy, the numerous precedents of Bills of Costs and the alphabetical table of fees will be welcomed. A slip showing the effects of the County Court (Amendment) Rules, 1936, has been inserted to bring the work up to date.

Lieutenant-Colonel George Gosling Plant, solicitor, of Gainford, Durham, left £86,890, with net personalty £71,705.

Books Received.

A Dictionary of Slang and Unconventional English. By ERIC PARTRIDGE. 1937. Crown 4to. pp. xv and 999. London: George Routledge & Sons, Ltd. 42s. net.

Tax Cases. Vol. XX, Pt. V. 1937. London: H.M. Stationery Office. 1s. net.

Automatic Machines and the Law. By GABRIEL COHEN, of Gray's Inn, Barrister-at-Law, and I. L. MALTZ, Solicitor of the Supreme Court. 1937. Crown 8vo. pp. (with Index) 111. London: Jordan & Sons, Ltd. 5s. net.

Burnett's Elements of Conveyancing (with Precedents) for the Use of Students. Sixth Edition, 1937. By JOHN F. R. BURNETT, of Gray's Inn, Barrister-at-Law. Royal 8vo. pp. xxxii and (with Index) 501. London: Sweet and Maxwell, Ltd. 21s. net.

Parliamentary News.

Progress of Bills.

House of Lords.

Architects' Registration Bill.
Reported, without Amendment. [16th February.

Barnet District Gas and Water Bill.
Read Second Time. [16th February.

Beef and Veal Customs Duties Bill.
Read Third Time. [11th February.

Burgess Hill Water Bill.
Read Second Time. [16th February.

Consolidated Fund (No. 1) Bill.
Read Third Time. [16th February.

Divorce (Scotland) Bill.
Read Second Time. [11th February.

East India Loans Bill.
Read Second Time. [16th February.

Empire Settlement Bill.
Read First Time. [17th February.

Folkestone Pier and Lift Bill.
Read Second Time. [16th February.

Greenock Burgh Extension, etc., Provisional Order Confirmation Bill.
Reported. [16th February.

Mansfield District Traction Bill.
Read Second Time. [16th February.

Margate, Broadstairs and District Electricity Bill.
Read Second Time. [16th February.

Pontypool Gas and Water Bill.
Read Second Time. [16th February.

Public Records (Scotland) Bill.
Read Third Time. [16th February.

Public Works Loans Bill.
Read Third Time. [17th February.

Regency Bill.
In Committee. [16th February.

Reserve Forces Bill.
Read First Time. [17th February.

Rickmansworth and Uxbridge Valley Water Bill.
Read Second Time. [16th February.

Trade Marks (Amendment) Bill.
Amendments agreed to. [17th February.

Unemployment Assistance (Temporary Provisions) (Amendment) Bill.
Read Third Time. [16th February.

Wessex Electricity Bill.
Read Second Time. [16th February.

House of Commons.

British Shipping (Continuance of Subsidy) Bill.
Reported, without amendment. [16th February.

Cinematograph Films (Animals) Bill.
Read First Time. [11th February.

Coal Mines (Employment of Boys) Bill.
Reported, with Amendment. [17th February.

Empire Settlement Bill.
Read Third Time. [16th February.

Factories Bill.
Read Second Time. [15th February.

Firearms Bill.
Read Third Time. [15th February.

Local Government (Financial Provisions) Bill.
Read First Time. [16th February.
Maternity Services (Scotland) Bill.
Reported with Amendments. [16th February.
Merchant Shipping Bill.
Reported without Amendment. [16th February.
Methylated Spirits (Scotland) Bill.
Read First Time. [17th February.
Ministry of Health Provisional Order (Waltham Joint Hospital District) Bill.
Read Second Time. [17th February.
Nationalisation of Mines and Minerals Bill.
Second Reading negatived. [12th February.
Reserve Forces Bill.
Read Third Time. [16th February.
Richmond (Surrey) Corporation Bill.
Read Second Time. [15th February.
Shops Bill.
Read First Time. [15th February.
Southampton Corporation Bill.
Read Second Time. [16th February.
Staffordshire County Council Bill.
Read Second Time. [15th February.
Statutory Salaries Bill.
Read First Time. [17th February.
Unemployment Assistance (Temporary Provisions) (Amendment) Bill.
Lords Amendment agreed to. [16th February.
Wadebridge Rural District Council Bill.
Read Second Time. [15th February.

Questions to Ministers.

LAND REGISTRY.

Mr. WALKDEN asked the Attorney-General whether any arrangements are under consideration to extend the services of His Majesty's Land Registry to cover the County of Surrey?

THE ATTORNEY-GENERAL: As I said on the 20th January, in reply to my hon. Friend the Member for Lincoln (Mr. Liddall), the question of the area to which any further order extending compulsory registration of land should apply is under the constant consideration of the Lord Chancellor, and his lordship is in consultation with the Ordnance Survey on the question as to what arrangements can be made for the preparation in the first place of the necessary maps. Until this consultation has proceeded a little further, it is not possible to consider arrangements in respect of any specific county; but if it is desired to put forward any representations on the subject of the County of Surrey in particular, they will have his lordship's careful attention. [16th February.

RIBBON DEVELOPMENT RESTRICTION.

Mr. BELLENGER asked the Minister of Transport how many appeals against decisions given under the Restriction of Ribbon Development Act have been received by his Department; and how many of these appeals have been decided in favour of the appellant?

Mr. HORE-BELISHA: Of the fifty-four decisions given, twenty have been in favour of the Appellant.
[17th February.

Societies.

The Solicitors' Managing Clerks' Association.

THE NEW COUNTY COURT PROCEDURE.

Members of The Solicitors' Managing Clerks' Association heard a lecture on "The new County Court Act and Rules," by Mr. WILFRED DELL, the Registrar of the Mayor's and City of London Court, in the Middle Temple Hall, on the 5th February. Sir H. HOLMAN GREGORY, K.C., Recorder of the City of London, was in the chair.

Mr. DELL explained the object of the County Courts (Amendment) Act, 1934, which was to clear out of the way a lot of the old matters of the 1888 and other Acts and to introduce non-controversial matters. Provision was made for putting parts of the Act into operation from time to time by Order in Council. All the old Acts were incorporated in the new Act, and many sections, but not all, dealing with county court procedure had been brought in. Some cumbrous titles, such as "The County Court of Middlesex, holden at Bloomsbury," were being clarified, and solicitors would simply find now "Bloomsbury County Court." Under the 1888 Act it had been their lot to try to get possession, and they were always in considerable doubt which section applied. If proceedings were brought under one section, the judge generally said it was the other. Now these two old confusing sections—138 and 145—had gone, and if they wanted to take any action now for the recovery of land there was one procedure and one procedure alone: under s. 48 of the new Act.

Normal jurisdiction in the Act ran up to £100, but a counter-claim could be received for any sum. It was rather strange to people to know that, but now, if the counter-claim was of great substance, say £500, a right was given to go to the High Court within a certain time and ask that the action might be transferred. The High Court could, if it thought fit, transfer the whole of the action, but solicitors must take that step within a certain time.

THE RULES.

Mr. Dell said that the first change to which he wished to draw attention was one concerning assigned debts. If there were an assignment of debts in London, normally payable at Newcastle, plaintiffs would not in future be able to issue a summons except at the place where the original debt was payable—i.e., Newcastle. That, he thought, was quite fair; it came under Ord. 2. Under this order there was probably the most provocative change that solicitors would find in the rules. Where goods were sold or hired on the instalment system and the debt was under £20, they could sue only in the defendant's court unless the defendant or his authorised agent had been present elsewhere when the contract was made. If someone sold a wireless set and his headquarters were in London, then unless the defendant came to London and signed the contract there the vendor could not institute proceedings in the county court at London. If he signed it at Newcastle, to Newcastle the plaintiff must go and issue his process.

The Lord Chancellor's department did not desire at this early stage to bring in new rules, but, unfortunately, about two days after the 1st January, when the general rules came into operation, the department had received notice of amendment. Mr. Bell took a little satisfaction to himself over one matter, because he had had an early insight into the rules and had ventured to draw the department's attention to a point concerning firms like Messrs. Flowerdew and Messrs. Smellie. He had predicted a storm if the department passed a rule depriving such firms of assistance in the matter of service. They had passed the rule and it had provoked the storm he had anticipated. The rule provided that a summons could only be served by someone in the permanent and exclusive employ of the plaintiff's solicitor. The department had now made an arrangement which allowed the use of the services of process servers. Another rule was very important, having regard to Ord. 2. It was urged that plaintiffs would be at considerable expense in having to send witnesses so far afield. Under the rules there was a provision that plaintiffs could send to the court evidence in support of their claim and need not give notice. In his view this provision was directed to the clause instalments, because it provided that a plaintiff should not use the affidavit evidence if by chance he had commenced his action in the wrong court. If, for example, a plaintiff commenced his action in Mr. Dell's court and the registrar said that on a letter he had received from the defendant he was transferring the case, the plaintiff would not be able to send an affidavit to Newcastle, but would have to send his witnesses. If a plaintiff once attended a distant court and had to send his witnesses, the registrar could deprive him of the costs of the attendance from a great distance. That was why the rule had been introduced: to give plaintiffs an opportunity, if they took advantage of the long distance, to put their affidavit evidence in.

There were quite a number of limitations on default summonses against infants by moneylenders, assignees of debts or mortgagees. He was afraid that mortgage solicitors—and with a great deal of care he would say building society solicitors—had brought this on their own heads. It had become known to the department that, in addition to taking proceedings in the county courts for recovery of arrears of instalments, they had been rushing up to the High Court for writs of possession and running the defendant into a tremendous amount of cost and anxiety. There was a rule now that they must not start an action on a default summons. The rules had almost put mortgagees on a footing with moneylenders: they had to state all the prior proceedings they had taken, so that the court would know if they were causing unnecessary bother and expense to a defendant. Almost an alarming thing, in his view, was that on a default summons there was no necessity even for an affidavit. It was taking more or less the same position as a High Court writ.

Another entirely new thing was the originating application, which was much the same as the originating summons in the

High Court. Roughly speaking, it was used in equity, and one or two of the Acts to which it applied were the Settled Land Act, the Law of Property Act, the Landlord and Tenant Act, the Agricultural Holdings Act and the Married Women's Property Act. He drew attention to Ord. VI, r. 7, which said that if the learned judge found that the plaintiff had commenced an action in the wrong form—i.e., as an action instead of by originating proceedings, he could if he thought fit allow the action to proceed. This was a very valuable safeguard. Moneylenders had for some years been obliged to give a very detailed set of particulars of claim, and this rule had been made to apply to a claim of under £2.

In regard to substituted service and leave to proceed, a great deal of confusion had now all been cleared up. Sometimes the registrar was asked to make an order for service by post. The rule said that a plaintiff could get an order for service by post, but on the form it said "registered post," so in the majority of cases he would rely on service by registered post. People sometimes said that although an order had been made by registered post, it had come back through the ordinary post. His reply was that the court had made an order and it was good service. The rule provided that, if the party carried out what it said, there would be effective service. It was only putting into practice what he thought was right. Sometimes an artful defendant gave a lot of bother to the bailiff. Although he had never seen one yet, it was surprising to know the number of cases where a summons had been served by posting it on the door. The bailiff could also put it in the letter box, provided he had heard persons within.

During the course of a hearing or argument in chambers a registrar might think he would like to give a direction helpful to the case when it came on for trial, but because this was not included in the application he had not formerly been able to do it. The rules now provided that a registrar could of his own motion give directions. Formerly a defendant who had a good defence could apply to a registrar to direct the plaintiff to pay into a court a sufficient sum to meet his expenses if he won. If the plaintiff did not comply, the action was automatically struck out and could not be put back. Now there was a provision that if the money came in a little late the registrar could reinstate the case and put it down for disposal.

There was provision for interpleader proceedings when the bailiff was in. In the old days, if a person had £50 which two people were claiming, he used to have to sit tight until the other sued him. Often he had to bring in one of them as a co-defendant or a third party. If anyone now was in that position with regard to money or goods, the county court procedure allowed him to interplead.

Under the 1888 Act all costs followed the event. They did not do so any longer, but were within the discretion of the court. Solicitors would now, in certain cases where they could get a certificate that the matter was of public importance, be able to get costs under £2. Costs would be more or less tightly bound on Scales B and C. Learned counsel, if they thought fit and had the courage of their convictions, could apply to the learned judge for a certificate that the case warranted a higher fee to them. In conclusion, Mr. Dell said that the pleadings used in the county courts would have to be signed by learned counsel in precisely the same way as in the High Court.

Mr. ARDEN proposed and Mr. FORDEN seconded a vote of thanks to the chairman and Mr. Dell, and to the Benchers of the Middle Temple for allowing the Association the use of the hall. Mr. Dell and Sir Holman Gregory briefly replied.

University of London Law Society.

The University of London Law Society held their weekly meeting on Tuesday, 16th February, at Gower Street, when Mr. Goodman proposed and Mr. Rose seconded a motion that: "Things are getting worse and worse." The motion was opposed by Mr. Betuel, Barrister-at-Law and Mr. Stranders. The following also spoke Messrs. Puri, Robinson and Kraft. On the vote the house being equally divided the President, Mr. J. E. C. Wood, gave his casting vote against the motion, on the ground, he said, that as a result of looking at the past Presidents who were with them that evening he did not think that things were getting worse.

The Hardwicke Society.

A meeting of the Society was held on Friday, 12th February, at 8.15 p.m., in the Middle Temple Common Room, the President, Mr. J. A. Petrie, in the chair. The Hon. F. P. Howard moved: "That Hitler is leading the world back to barbarism." Prince Leonid Lieven opposed. There also spoke Mr. Campbell Prosser, Mr. G. Krikorian, Mr. Fearnehough, Mr. Honig, Mr. Picarda, Mr. Lewis Sturge (Hon. Secretary), Mr. A. Newman Hall (ex-President), Mr. J. A. Petrie (President). The hon. mover having replied, the house divided, and the motion was carried by seven votes.

The Birmingham Law Society.

The annual general meeting of the Birmingham Law Society will be held at the Library, on Wednesday, the 24th February, at 3 o'clock in the afternoon, to receive the report of the committee for 1936, and the treasurer's accounts for the same period; to instal the President and officers for 1937; to elect auditors for 1937; to fill vacancies on the committee; and for the transaction of other business.

The retiring members of the committee are Messrs. C. A. Elton, E. Evershed, G. A. L. Hatton, S. Morris, F. H. C. Wiltshire, L. Clark, C. H. Saunders and S. Smith, of whom the five first named have been nominated by the committee for re-election, and the three last named are ineligible for re-election until the annual meeting in 1938.

The Law Library will be closed to readers and no books will be issued from 2.45 p.m. until 4.30 p.m. next Wednesday.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 9th February (chairman, Mr. J. R. Campbell-Curtis), the subject for debate was "That this House rejoices in the destruction of that symbol of the Victorian Era, the Crystal Palace." Mr. H. J. Baxter opened in the affirmative. Mr. P. H. North-Lewis opened in the negative. The following members also spoke: Messrs. W. M. Pleadwell, E. Long, G. Roberts, J. F. Ginnett, W. S. Chaney, C. F. Baron (visitor), K. Elphinstone, J. K. Thorpe, L. A. Darke, W. Stabb, J. B. Latey, N. Green, J. S. Blair, J. Montgomerie, L. Stone and J. E. Terry. There were twenty-five members and two visitors present.

The Union Society of London.

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 17th February, at 8.15 p.m., the President (Mr. S. R. Lewis) being in the chair. Mr. Robert Orme proposed the motion: "That it is desirable that Germany should become again a colonial power." Mr. D. W. Dobson (Hon. Treasurer) opposed, and Mr. Russell-Clarke, the Vice-President (Mr. Rendle), the President (Mr. S. R. Lewis), Mr. Oakes and Mr. Picarda also spoke. Mr. Orme replied. Upon division the motion was lost by seven votes.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. JAMES HENRY DONALD HURST, of 41, Temple Row, Birmingham, to be a Judge of County Courts, and has made the following arrangements in connection with the vacancy caused by the death of His Honour Judge Higgins: His Honour Judge Drucquer to be transferred from the County Courts on Circuit 23 (except Barnet) and to be the Judge of Willesden, Brentford and Barnet County Courts (Circuit 46); His Honour Judge Hurst to be the Judge of the County Courts on Circuit 23 (Coventry, Northampton, &c.). The appointment is dated the 13th February, 1937. Mr. Hurst was called to the Bar by the Middle Temple in 1920, and joined the Oxford Circuit.

The India Office announces that the King has been pleased to approve the appointment of Mr. Justice ALAN GERALD RUSSELL HENDERSON, of the Indian Civil Service, as a Puisne Judge of the High Court of Judicature at Calcutta in the place of Mr. Justice Dwarka Nath Mitter, with effect from 1st March, 1937.

Mr. H. D. E. MACVITIE, M.A., solicitor, has been appointed Assistant Solicitor at Chesterfield. Mr. MacVitie was admitted a solicitor in 1935.

Notes.

The Arden Scholarship at Gray's Inn for 1937 (£150 a year for three years) has been awarded to Miss Ellice Aylmer Hearn, B.A., B.C.L., St. Hugh's College, Oxford.

Sir George Jones, M.P., Recorder of Colchester in succession to the late Sir Henry Curtis-Bennett, K.C., took his seat at Colchester Quarter Sessions last Saturday for the first time, and was welcomed by the Mayor and the members of the town council.

The University of London announces that a lecture on "Hungarian Customary Law in Comparison with English Case Law" will be given at The London School of Economics, Houghton Street, Aldwych, W.C.2, by Professor Charles Szladits, Professor of Civil Law in the Royal Hungarian University, Budapest, at 5 p.m., on Tuesday, 9th March. The lecture is addressed to students of the University and to others interested in the subject. Admission free without ticket.

In recognition of the valuable services rendered to the University and civic life of Durham County, Dr. J. S. G. Pemberton was presented in Durham Castle Hall last Tuesday, with his portrait, painted by Mr. T. C. Dugdale. Formerly M.P. for Sunderland, Dr. Pemberton is chairman of the Durham Quarter Sessions and Recorder of Durham. The presentation was made by the Bishop of Durham. The portrait was unveiled by the Chancellor of Durham University, Lord Londonderry.

To meet the convenience of members of the legal profession who may wish to attend the International Congress of Comparative Law, the date has been fixed for 4th-11th August in place of the earlier date previously announced. The hotels at The Hague and Scheveningen are quoting very reasonable terms, with a special discount for persons attending the conference and members of their families, provided that a reservation is made with the hotel direct. Persons taking part in the conference pay a subscription of 12 Dutch guilders (about 25s.). Lord Macmillan has consented to head the English delegation. There will be a separate delegation from Scotland. Further particulars may be obtained from Professor R. W. Lee, 2, Hare Court, Temple, E.C.4.

BAR COUNCIL ELECTION RESULT.

The voting to fill twenty-four places on the General Council of the Bar has resulted in the election of the following members: Sir Herbert Cunliffe, K.C., A. T. Miller, K.C., Sir Gerald Hurst, K.C., A. F. Topham, K.C., J. D. Cassels, K.C., H. B. Vaisey, K.C., St. John G. Micklethwait, K.C., J. Willoughby Jardine, K.C., Noel B. Goldie, K.C., M.P., Sir Walter Monckton, K.C.V.O., K.C., J. G. Trapnell, K.C., W. Hanbury Aggs, J. W. N. Holmes, A. Andrewes Uthwatt, W. Blake Odgers, Albert Crew, William Latey, M.B.E., J. H. Boraston, C.B., T. M. O'Callaghan, E. Anthony Hawke, C. R. R. Romer, D. H. Robson, H. B. Taylor and E. Garth Moore.

Court Papers.

Supreme Court of Judicature.

Date.	Emergency Rota.	Appeal Court No. I.	Group I. Mr. Justice Eve. Witness Part I.	Group I. Mr. Justice Bennett. Witness Part II.
	Mr.	Mr.	Mr.	Mr.
Feb. 22	Ritchie	Hicks Beach	*Jones	*Ritchie
,, 23	Blaker	Andrews	*Ritchie	*Blaker
,, 24	More	Jones	*Blaker	*More
,, 25	Hicks Beach	Ritchie	More	*Hicks Beach
,, 26	Andrews	Blaker	Hicks Beach	*Andrews
,, 27	Jones	More	Andrews	Jones
	Group I. Mr. Justice Crossman. Non-Witness	Mr. Justice Clauson. Non-Witness	Group II. Mr. Justice Luxmoore. Witness Part II.	Mr. Justice Farwell. Witness Part I.
	Mr.	Mr.	Mr.	Mr.
Feb. 22	Blaker	Andrews	Hicks Beach	*More
,, 23	More	Jones	Andrews	*Hicks Beach
,, 24	Hicks Beach	Ritchie	Jones	*Andrews
,, 25	Andrews	Blaker	Ritchie	*Jones
,, 26	Jones	More	Blaker	*Ritchie
,, 27	Ritchie	Hicks Beach	More	Blaker

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 4th March, 1937.

	Div. Months.	Middle Price 17 Feb. 1937.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	109	3 13 5	3 7 6
Consols 2½%	JAJO	79½	3 2 11	—
War Loan 3½% 1952 or after	JD	102	3 8 8	3 6 8
Funding 4% Loan 1960-90	MN	112	3 11 5	3 5 0
Funding 3% Loan 1959-69	AO	97½	3 1 6	3 2 6
Funding 2½% Loan 1956-61	AO	89¼	2 16 0	3 2 10
Victory 4% Loan Av. life 23 years	MS	110½	3 12 5	3 6 9
Conversion 5% Loan 1944-64	MN	115	4 6 11	2 9 2
Conversion 4½% Loan 1940-44	JJ	107	4 4 1	2 19 6
Conversion 3½% Loan 1961 or after	AO	102½	3 8 4	3 6 11
Conversion 3% Loan 1948-53	MS	100½	2 19 10	2 19 6
Conversion 2½% Loan 1944-49	AO	98½	2 10 9	2 13 0
Local Loans 3% Stock 1912 or after	JAJO	91½	3 5 7	—
Bank Stock	AO	357½	3 7 1	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	79½	3 9 2	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	89½	3 7 0	—
India 4½% 1950-55	MN	111½	4 0 9	3 7 10
India 3½% 1931 or after	JAJO	92	3 16 1	—
India 3% 1948 or after	JAJO	78	3 16 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	114	3 18 11	3 13 6
Sudan 4% 1974 Red. in part after 1950	MN	113½	3 10 6	2 16 5
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	3 3 10
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106	4 4 11	3 3 6
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	91	2 14 11	3 2 8
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	107	3 14 9	3 9 6
Australia (C'mm'nw'th) 3% 1955-58	AO	95	3 3 2	3 6 6
Canada 4% 1953-58	MS	109	3 13 5	3 5 11
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	99	3 0 7	3 2 10
†Nigeria 4% 1963	AO	112	3 11 5	3 6 5
*Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	103	3 8 0	3 5 2
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	94	3 3 10	—
*Croydon 3% 1940-60	AO	99	3 0 7	3 1 2
Essex County 3¼% 1952-72	JD	106	3 6 0	3 0 5
Leeds 3% 1927 or after	JJ	90	3 6 8	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	103	3 8 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	77	3 4 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	89	3 7 5	—
Manchester 3% 1941 or after	FA	90	3 6 8	—
*Metropolitan Consd. 2½% 1920-49	MJSD	98½	2 10 9	2 12 9
Metropolitan Water Board 3% "A" 1963-2003	AO	89	3 7 5	3 8 5
Do. do. 3% "B" 1934-2003	MS	89	3 7 5	3 8 4
Do. do. 3% "E" 1953-73	JJ	96	3 2 6	3 3 10
Middlesex County Council 4% 1952-72	MN	111	3 12 1	3 2 4
* Do. do. 4½% 1950-70	MN	113	3 19 8	3 6 5
Nottingham 3% Irredeemable	MN	90	3 6 8	—
Sheffield Corp. 3½% 1968	JJ	105	3 6 8	3 4 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	107	3 14 9	—
Gt. Western Rly. 4½% Debenture	JJ	114½	3 18 7	—
Gt. Western Rly. 5% Debenture	JJ	127½	3 18 5	—
Gt. Western Rly. 5% Rent Charge	FA	125½	3 19 8	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	122½xd	4 1 8	—
Gt. Western Rly. 5% Preference	MA	117xd	4 5 6	—
Southern Rly. 4% Debenture	JJ	105	3 16 2	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108	3 14 1	3 10 3
Southern Rly. 5% Guaranteed	MA	123½xd	4 1 0	—
Southern Rly. 5% Preference	MA	113½xd	4 8 1	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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